Preface

Praise belongs to Allah, the Lord of the Worlds, and peace and blessings be upon our master Muhammad and his family and Companions.

This is a study of Imam Abu Hanifa – his life, opinions and *fiqh*. I first address his life in order to understand his personality, psychology and thought, so that I can offer the reader a true and sound picture in which the special qualities and attributes of this Imam are revealed. Then I examine his views on dogma, *fatwas* and analogy.

Deriving a true picture of Abu Hanifa from the books of history and biographies is not easy since the adherents of his school have been excessive in their praise, going beyond acceptable bounds, and his detractors have been equally intemperate in their criticism. When faced with these two extremes, the investigator who seeks only the truth may be confused and this uncertainty can only be resolved with difficulty and great effort.

I think that I have managed to reveal a true picture of Imam Abu Hanifa, with all its shadows and shafts of light, and in the process of discovering it I have shed light on the time in which he lived and mentioned some details of the most notable contemporary sects. It is certain that he used to argue and debate with these sects and that their opinions and ideas were much discussed at that time. Mentioning them will clarify the spirit of the age and the currents of thought prevalent in it.

Then I examine his opinions on politics and dogma. This is necessary if we want to study all the intellectual aspects of any thinker. His views on politics had an effect on the course of his life. To ignore them would be to ignore an important aspect of his personality, psychology, heart and thought. His views on dogma were the clarification of all the ideas prevailing in his age and the pure core of the opinions of those who were free of excess and extravagance. They were a sound expression of the views of the Muslim community. Indeed, they are the core of the *deen* and the spirit of certainty.

I then go on to look at his *fiqh*, which is the primary goal of this study. I begin by elucidating the general principles which he used in his deduction and which define its path and clarify his method in *ijtihad.* For this I rely on what the early Hanafis wrote regarding the principles on which they depended and the method employed by Abu Hanifa. Concerning that I chose to be succinct rather than comprehensive, general rather than specific, and did not go into all the principles mentioned by the Hanafis since many of them cannot be ascribed to the Imam and his companions but come from a later period.

Having identified the method of Abu Hanifa, I turn to the study of some of the secondary areas of his views derived from a detailed examination of his life, such as some of the areas of *fiqh* which are connected to human free will in respect of property and some of the areas which are connected to trade and merchants in a general fashion. Scholars also mention that Abu Hanifa was the first to speak on legal stratagems and so it is essential to clarify that area of his thought, distinguishing the reality of what he did, and balance between what is actually transmitted from him and what is said about him.

In all the methods and branches mentioned, the Imam's thought will be clarified by mentioning some of the disagreements between him and his companions. Clarification of their differences will show their ideas and orientations.

In order to reach a fruitful conclusion to this study, it was also necessary to clarify the action of the later adherents of this school in respect of the intellectual legacy left by the Imam and what subsequent generations did with it when faced with disparate customs. It was also necessary to examine the extent to which deduction played a part in the school and to look at the flexibility of its general principles of extrapolation and the role it had in preserving the path of Islam, and the Book and the *Sunna* and their guidance.

We must affirm that the need for the help of Allah Almighty in doing this is immense. If it were not for His help, we should not reach any end or achieve any goal. We beseech Him to help us and grant us success.

Muhammad Abu Zahra
Dhu’l-Qa‘da 1364
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Foreword

It says in *al-Khayrat al-Hisan* by Ibn Hajar al-Haytami al-Makki: "The renown of a man in the past is indicated by the disagreement of people regarding him. Do you not see that when 'Ali died, may Allah ennoble his face, there were two parties: one of which intensely loved him and the other of which intensely hated him?"

This test is true of many people and can also be applied to Abu Hanifa. People were partisan about him to the extent that some people practically put him in the ranks of the Prophets and claimed that the Torah gave the good news of him and that Muhammad, may Allah bless him and grant him peace, had mentioned him by name and stated that he was the Lamp of his Community. They attributed to him endless virtues and qualities and exalted him above his rank. On the other hand, some people were partisan against him to a fanatical extent, accusing him of being a heretic and of leaving the path, corrupting the deen and abandoning the *Sunna*. Indeed, they accused him of contradicting it and giving *fatwas* regarding the *deen* without evidence or clear authority. Some of them went to excess in attacking him and were not content with unfounded falsification, but were so intensely hostile that they attacked his *deen*, personality and faith.

This happened even while Abu Hanifa was still alive and discussing with his students the requirements of *fatwas*: what should be taken from *hadith*, what should be derived by analogy and rules, and how to conduct *ijtihad* in a proper manner.

Why was there such disagreement about him? There are various reasons for it which shall be examined in detail in the course of this study. But it is appropriate to mention here one reason which may be the basis of the others. Abu Hanifa had a forceful personality which caused his method in *fiqh* to spread beyond his own circle and region to other regions of the Islamic world. People discussed his views in most areas of the Islamic world, some opposing them and some agreeing with them.

His views had opponents and supporters. Those who depended on texts alone regarded them as an innovation in the *deen* and strongly objected to them. Sometimes the point of objection was not even the opinion of Abu Hanifa, who was a scrupulous and godfearing man, but was merely something wrongly attributed to him. The opponent would speak of it because he saw it as an innovation without knowing its basis or who had actually said it. The sharpness of the criticism was sometimes blunted when the critic saw him or learned the evidence on which the judgement was based. Sometimes the critic would then respect the opinion and agree with him.

An illustration of such an instance is found in respect of al-Awza'i, the *faqih* of Syria, who was a contemporary of Abu Hanifa. He said to 'Abdullah ibn al-Mubarak, "Who is this innovator who has emerged in Kufa called Abu Hanifa?" Ibn al-Mubarak did not answer him, but began to mention some difficult questions and how to understand them and give *fatwa* regarding them. He asked, "Who gave these *fatwas*?" He replied, "A shaykh I met in Iraq." Al-Awza'i said, "This is a noble shaykh. Go and take a lot from him." "It is Abu Hanifa," he stated. After that al-Awza'i and Abu Hanifa met in Makka and discussed the questions which Ibn al-Mubarak had mentioned. He investigated them. When they parted, al-Awza'i said to Ibn al-Mubarak, "I envy the man his great knowledge and intelligence. I ask forgiveness of Allah. I was in clear error. Devote yourself to the man. He is not as they say about him." (*al-Khayrat al-Hisan*, p. 33)

The conflict between his supporters and opponents intensified in the fourth century AH when *madhhab* partisanship became prevalent and *fiqh* was debated by partisans. There were debates in people's houses and in mosques about these matters so that whole days were spent in debates and arguments about *madhhab*. Each was a supporter of his Imam and partisan on his behalf. It is in this time that most of the biographies of the Imams were written, usually with excessive praise of the particular Imam in question and attacking the others. The conflict was extremely severe between the Hanafis and the Shafi'is. That is why these two Imams became targets for bitter attacks, given the extreme partisanship of their supporters.

Abu Hanifa, of course, was a target because of the great number of *fatwas* he gave based on opinion which led people to attack his knowledge of *hadiths*, his scrupulousness, the quality of his *fatwas* and other things which were connected to his school regarding deduction and extrapolation. The fanatics attacked him for all

those things and some exceeded the bounds to such an extent that some Shafi'is objected to it and saw such attacks as tantamount to sin and improper conduct. Some of those people were fair towards Abu Hanifa and recorded his virtues and refuted what the extreme Shafi'is said. Thus we note that as-Suyuti, a Shafi'i, wrote a treatise on the virtues of Imam Abu Hanifa. We further see that Ibn Hajar al-Haytami al-Makki, also a Shafi'i, wrote a treatise entitled *al-Khayrat al-Hisan* on the virtues of Imam Abu Hanifa. Ash-Sha'rani also mentions and defends Abu Hanifa.

A researcher does not find it easy to deal with Abu Hanifa because of the confusion of reports concerning him, which are like heaps in which jewels are mixed with mud, so that it is difficult to sift through them and find the true jewels in the midst of the muck. It requires a great deal of scrutiny and sifting.

It is the same with his opinions, where we also find the path difficult to follow because there is no book transmitted from Abu Hanifa in which he recorded his opinions or his principles. We only find opinions transmitted from him through his students, especially the books of Imam Abu Yusuf and Imam Muhammad ash-Shaybani which transmitted his opinions with those of his companions and those of some of the Iraqis contemporary with him, like Ibn Shibrama, Ibn Abi Layla and 'Uthman al-Batti. But if we rely totally on what his two main students said, we will still not have a complete picture. There are many gaps which must be filled because their books certainly do not report all of the views of Abu Hanifa and so we must examine other sources as well. All of this requires precise investigation and research.

Another drawback is that the fundamental principles and methods of deduction used by Abu Hanifa are not recorded either and we cannot know them in detail from what is transmitted from him or from his students or other people. Those principles which are recorded are deduced from the body of the secondary judgements he made and how they are connected. There are various sources which do this, among which are the treatise of Abu'l-Hasan al-Karkhi, the treatise of ad-Dabusi and the letter of al-Bazdawi. But the methods recorded are not transmitted from the Imam or his companions: they are only deduced from the Imams who formulated the Hanafi school. Thus it is not easy to uncover the sources of the school.

Another deficiency encountered when studying Abu Hanifa is that we do not find anything transmitted from him other than his legal opinions. As for his views on dogma and on the imamate, we do not find anything about them in the books of his companions. Some views on dogma are reported from him in certain books ascribed to him, including the book entitled *al-Fiqh al-Akbar*, a small treatise on which many commentaries have been written, and the *Treatise of the Scholar and Student*. There is also his letter to 'Uthman al-Batti.

But we do not, for instance, find any opinion about the imamate recorded by his pen or by dictation or transmitted by any of his companions. His life and the events and trials which occurred during it, however, do inform us about a specific political position. His biography affirms his firm connection to Imam Zayd ibn 'Ali, Zayn al-'Abidin, and other Shi'ite Imams, and the statements of his companions indicate that his inclination, as was true of the Persians as a whole, was with the descendants of 'Ali and that his trial occurred because of this leaning. Nevertheless, there is no suggestion of this in any of the books ascribed to him or in any of the reports transmitted from him. There is no doubt that his opinion about the imamate was mentioned in his circle at times and that he differed from the Abbasids.

But his companions, especially Abu Yusuf and Muhammad ash-Shaybani, were firmly attached to the Abbasids and both acted as *qadis* for them. They did not record the opinions of their shaykh regarding the Abbasid government and diminishing its authority. That is the reason why many of his opinions are lost in the past and can only be rediscovered with great difficulty.

These are gaps which the historian must strive to fill and they illustrate the difficulty involved in studying him. Moreover, the school of Abu Hanifa is found both in the East and the West and has been subject to the disparate customs of different regions. It became the official school for a long time under the Abbasids, and when the Ottomans took on the position of khalif they also made it their official *madhhab* and so it became the *madhhab* of the khalifate. It was the official school in Iraq, Egypt, Syria, and other places, and its influence extended as far as India and it also became the school of the Muslims in China. The scholars in all these different regions had their own deductions and so there are many differing opinions on questions within the Hanafi *madhhab*.

Chapter One
The Life and Times of Abu Hanifa

His birth and lineage

According to most sources, Abu Hanifa was born in Kufa in 80 AH. Although there is almost total agreement on this, there is one source which posits 61AH, but this does not tally with the facts of his life since it is agreed that he did not die until 150 AH. Most say that he died after al-Mansur instituted the Inquisition. If he had been born in 61 AH, he would have been 90 at that time.

His father was Thabit ibn Zawti al-Farisi, a Persian. His grandfather was one of the people of Kabil who was captured in the Arab conquest of the region. He was enslaved to one of the Banu Taym and then freed. His *wala'* belonged to this tribe and so he was a Taymi by clientage. This information was transmitted by the grandson of Abu Hanifa, 'Umar ibn Hammad, but 'Umar's brother Isma'il said that Abu Hanifa was an-Nu'man ibn Thabit ibn an-Nu'man ibn al-Marzban. He said, "By Allah, we were never enslaved."

So his grandsons disagreed about his lineage. One said that his grandfather was called Zawti and the other that his name was an-Nu'man. The first said that he was captured and enslaved and the second completely denied it. The author of *al-Khayrat al-Hisan* combined the two versions, maintaining that the grandfather had two names, Zayti and an-Nu'man. He denied the enslavement. This present work agrees with the names but not the fact of enslavement, because the second version totally excludes it.

It seems probable that he was captured in the conquest, but that grace was shown him, which was the custom of the Muslims towards some of the important people of conquered lands, so as to uphold their position and importance in Islam and to bring their hearts and those of their children close.

Reliable sources state that he was a Persian and not an Arab or a Babylonian. Whether his grandfather was enslaved or not, he and his father were born free men. In any case, the fact that he was a client in no way detracts from his worth. The major exponents of *fiqh* in the time of the *Tabi'un,* whom Abu Hanifa met and from whose *fiqh* he extrapolated, were clients of tribes rather than pure Arabs. Most of the *fuqaha'* in the time of the *Tabi'un* and indeed the following generation were clients.

In *al-'Aqd al-Farid*, Ibn 'Abdu Rabbih says:

> Ibn Abi Layla said: 'Isa ibn Musa, a religious and very partisan man, asked me, "Who is the *faqih* of Iraq?"
>
> I replied, "Al-Hasan ibn Abi'l-Hasan (al-Basri)."
>
> "Then who?"
>
> I said, "Muhammad ibn Sirin."
>
> "Who are those two?" he asked.
>
> "Two clients," I replied.
>
> "Who is the *faqih* of Makka?" he asked.
>
> "'Ata ibn Abi Rabah, Mujahid, Sa'id ibn Jubayr or Salman ibn Yasar," I replied.
>
> "Who are they?"
>
> "Clients."
>
> "Who are the *fuqaha'* of Madina?"
>
> "Zayd ibn Aslam, Muhammad ibn al-Munkadir, and Nujayh ibn Abi Nujayh," I replied.
>
> "And who are they?" he asked.
>
> "Clients," I said.
>
> His face changed colour. Then he asked, "Who knows the most *fiqh* of the people of Quba'?"
>
> "Rabi'a ar-Ra'y and Ibn Abi'z-Zinad," I responded.
>
> "Who are they?"
>
> "Clients."

He scowled and then asked, “Who is the *faqih* of Yemen?”
“Tawus, his son, and Ibn Munabbah,” I replied.
“Who are they?” he asked.
“Also clients.”
His veins bulged and he stood up. “And who is the faqih of Khorasan?”
“‘Ata’ ibn ‘Abdullah al-Khurasani.”
“Who is this ‘Ata’?”
“A client,” I said.
‘His scowl deepened and he glared until I became quite afraid of him. Then he said, “Who is the *faqih* of Syria?”
“Makhul,” I replied.
“Who is this Makhul?”
“A client,” I said.
He began breathing hard and then asked, “Who is the *faqih* of Kufa?”
By Allah, were it not for fear for him, I would have said, “Al-Hakim ibn ‘Utba and Hammad ibn Abi Sulayman,” but seeing his violent state I replied, “Ibrahim an-Nakha‘i and ash-Sha‘bi.”
“Who are they?” he asked.
“Two Arabs,” I replied.
“Allah is greater!” he exclaimed and calmed down.

There are other transmissions to the same effect from other sources which indicate that, during the time in which Abu Hanifa grew up, knowledge was for the most part among the clients. Since they lacked the glory of lineage, Allah gave them the glory of knowledge which is purer and more lasting. This shows the truth of the prophecy of the Messenger of Allah, may Allah bless him and grant him peace, that knowledge would be found among the sons of Persia. We find the *hadith* in al-Bukhari, Muslim, ash-Shirazi, and at-Tabarani: “If knowledge were suspended in the Pleiades, some of the men of Persia would still obtain it.”

Before going into Abu Hanifa’s lineage, we should perhaps first discuss the reason why, in Umayyad times, knowledge was found mostly among the clients. There were several reasons for this.

- In Umayyad times, the Arabs had authority and power and they fought wars and went on expeditions. All of which distra-cted them from study and learning. The clients, on the other hand, were free to study, analyse and investigate. They realised that they lacked power and so they wanted to obtain honour by a means which was within their grasp: knowledge. Social deprivation can lead to excellence, high aspirations and splendid deeds, and indeed it led those clients to master the intellectual life of Islam while the Arabs were politically and economically dominant.

- The Companions spent a lot of time with the clients. keeping their company morning and evening so the clients were able to take from the Companions what they had learned from the Messenger of Allah. When the era of the Companions ended, they became the bearers of knowledge after them and thus it was that most of the great *Tabi‘un* were clients.

- The clients came largely from ancient civilisations with developed cultures and science. This had an effect on the formation of their ideas and the direction of their pursuits, and indeed, at times, on their beliefs. Devotion to knowledge was part of their nature.

- The Arabs were not people of crafts and learning; and when someone devotes himself to knowledge, it becomes like a craft. A lengthy discussion about this can be found in Ibn Khaldun.

His upbringing

Abu Hanifa grew up in Kufa and was educated there and lived most of his life there as a student, debater and teacher. The sources in our possession do not mention his father’s life or what his occupation and circumstances were but certain things about his circumstances can be deduced. He must have been wealthy, a merchant, and a good Muslim. In most books which recount the biography of Abu Hanifa, it states that his father met ‘Ali ibn Abi Talib as a child and that his grandfather gave ‘Ali some *faludhaj*[1] on the day of

Nawruz. This indicates that his family were wealthy since they were able to give the khalif sweets which only the wealthy ate.

It is related that ‘Ali prayed for blessing for Thabit and his descendants when he saw him. This shows that he must have been a Muslim. It explicitly states in histories that Thabit was born into Islam and Abu Hanifa grew up in a Muslim household. That is confirmed by all scholars.

We find Abu Hanifa frequenting the market before he frequen-ted scholars. We see that throughout his life he engaged in trade and so we must deduce that his father was a merchant. It seems probable that he was a merchant in *khazz* silk and that Abu Hanifa followed his father’s occupation as is the custom of people both past and present. It is also probable that, following the custom of most wealthy city dwellers, he memorised the Qur’an. That assumption tallies with what is known of Abu Hanifa being one of the people who was very frequent in his recitation of the Qur’an. It is reported that he used to recite the entire Qur’an seven times in Ramadan, and even if that is an exaggeration, it is based on the fact that he recited the Qur’an a lot. Many sources report that he learned recitation from Imam ‘Asim, the source of one of the seven recitations (*qira’at*) of the Qur’an.[2]

Kufa was one of the two great Iraqi cities of the time. Iraq was home to many different religions, sects and beliefs and of various ancient civilisations. Syriac Christians were dispersed throughout it and they had schools there before Islam, in which Greek philosophy and the ancient wisdom of Persia were studied. Before Islam, Iraq was also home to several Christian sects where dogma was debated. After Islam, Iraq was a melting pot of diverse races and a place rife with confusion and disorder. There were clashes of opinion on politics and religion. The Shi‘a and Mu‘tazilites were there as well as the Kharijites in the desert. There were also the *Tabi‘un* who strove to take knowledge from the Companions they met. Knowledge of the *deen* was transmitted freely there. It was an environment of clashing sects and conflicting opinions.

Abu Hanifa observed these diverse currents and his intellect was sharpened and sifted these differing views. It appears that while still in his youth he debated and argued people from various sects. This reveals his upright natural disposition. He concentrated, however, on commerce, going mainly to the markets and rarely to scholars. This remained the state of things until one day a scholar noticed his intelligence and cleverness and thought that he should not devote himself entirely to trade. He told him to frequent the scholars as he did the markets.

It is transmitted that Abu Hanifa said, “One day I was going past ash-Sha‘bi who was sitting down. He called to me, ‘Where are you going?’ I said, ‘I am going to the market.’ He said, ‘I do not frequent the market. I am concerned with going to the scholars.’ I told him, ‘I rarely frequent them.’ He told me, ‘Do not be heedless. You must look into knowledge and sit with the scholars. I discern alertness and energy in you.’ That affected my heart and I ceased to frequent the market and began to turn to knowledge and Allah let me benefit from what he said.” (*Virtues of Abu Hanifa*, al-Makki, pt. 1, p. 59) After ash-Sha‘bi’s advice, Abu Hanifa turned to knowledge and frequented the circles of the scholars.

His involvement in learning

But to which group did he go? As is seen from the historical sources, there were three fields of knowledge at that time: circles which discussed the fundamentals of dogma, which was the arena of the different sects; circles which studied the *hadiths* of the Messenger of Allah, may Allah bless him and grant him peace; and circles which deduced *fiqh* from the Book and *Sunna* and gave *fatwa* about things which arose.

We have three versions of what happened. One mentions that when he devoted himself to knowledge, he turned to *fiqh* after examining all the sciences which were known at that time. Two other versions clearly state that he first selected the science of *kalam* and debated with the sects and then Allah directed him to *fiqh* to which he completely devoted himself. We will examine the three versions.

> It is related by various paths, including Abu Yusuf, that Abu Hanifa was asked, “How did you happen to come to *fiqh*?” He replied, “I will tell you. Success is from Allah and praise is His as He deserves and merits. When I wanted to learn knowledge, I looked at all the forms of knowledge and read some of them and thought about the end and usefulness of each. I said, ‘I will go into *kalam*.’ Then I looked and found that it had a bad aim and contained little benefit. When a man is proficient in it, he cannot speak openly and cast aside every evil and is likely to be called a sectarian.

"Then I examined literature and grammar, and found that the logical end of that discipline is to sit with a child and teach him grammar and literature. I examined poetry and saw that its end was eulogy, satire, lies and tearing apart the *deen*. Then I thought about the forms of Qur'an recitation (*qira'at*) and said, 'When I reach the end of it, young people will gather to read with me and discuss the Qur'an and its meanings and that is difficult.' So I said, 'I will seek *hadith*.' But then I said, 'To amass a lot of it I will have to have a long life before I will be of any use to people, and even then only youths will gather around me who will probably accuse me of lying and poor memory and that will be a burden for me until the Day of Rising.'

"Then I turned to *fiqh* and no matter which way I looked at it, it only increased in esteem and I could not find any fault in it. I saw that it involved sitting with scholars, *fuqaha'*, shaykhs and people of insight and taking on their character. I saw that it is only by knowing it that the obligations are properly performed and the *deen* and worship established. Seeking this world and the Next World can only be done through it. If anyone desires to seek this world through it, he seeks a weighty matter and will be elevated by it. If someone wants to worship and divest himself, no one can say, 'He worships without knowledge.' Rather it will be said, 'This is *fiqh* and acting by knowledge.'"

This anedote is illustrative of the sciences which were prevalent in his time and shows that he chose between them as he was inclined.

The second transmission is reported from Yahya ibn Shayban. He reports that Abu Hanifa said: "I was a man given to debate in *kalam* and spent some time indulging in it. The people of debate and disputation were mostly located in Basra. So I went to Basra about twenty times, staying more or less a year each time. I argued with the groups of Kharijites: Ibadites, Sufrites and other Kharijite sects. I considered *kalam* to be the queen of the sciences. I used to say that *kalam* was the basis of the *deen*.

"Then I reconsidered after a considerable part of my life had been spent involved in it. I reflected and realised that the Companions of the Prophet and the *Tabi'un* knew as much as we know and had more capacity, more understanding and better knowledge of the truth of matters. But they did not have arguments about it and did not delve into it. They withheld from doing that and forbade it strenuously. I saw them dealing with laws and areas of *fiqh* and speaking about such matters. That was what they sat to learn and those were the circles they attended. That was what they used to teach people and what they invited them to learn and what they encouraged them in. They gave *fatwa* and were asked for *fatwa* concerning matters of *fiqh*.

"That was the standpoint of the Companions, and the *Tabi'un* followed them in it. When their mode of behaviour became clear to us, we left debate, argument and delving into *kalam* and confined ourselves to the basic knowledge of *fiqh* and we returned to the position of the *Salaf,* taking from what they left and legislating as they legislated. The people of knowledge sat with us for that reason and I saw that those who were involved in *kalam* and debating were people whose trait was not that of our noble predecessors and whose path was not that of the righteous. I saw them as being hard-hearted and thick-skinned. They were not worried about the fact that they were conflicting with the Book and the *Sunna* and the righteous *Salaf* and that they had neither scrupulousness nor fear of Allah."

The third transmission is reported from Zafar ibn al-Hudhayl, the student of Abu Hanifa, who stated: "I heard Abu Hanifa say, 'I used to look into *kalam* until I was advanced in it and people pointed me out. We used to sit near the circle of Hammad ibn Abi Sulayman. One day a woman came to us and said, "A man has a wife who is a slave girl whom he wants to divorce according to the *Sunna*. How many times should he pronounce the divorce?" I told her to ask Hammad and then come back and tell me. She asked him and he said, "He should divorce her once at a time when she is not menstruating and he has not had intercourse with her and then leave her until she has menstruated two more times. Then when she has purified herself she may remarry." She returned and told us what he had said. I said, "I have no further use for *kalam*," and took my sandals and sat with Hammad. I used to listen to his questions and learned what he said and then went back again day after day. I remembered while his other students erred. He said, "Only Abu Hanifa should sit opposite me at the front of the circle."'"

These three transmissions are related in various forms but all bear the same import. It is clear that he chose *fiqh* after looking into other fields of knowledge, and two say that he was skilled in *kalam* before turning to *fiqh*. It cannot be denied that his final interest was knowledge of *fiqh*.

Abu Hanifa experienced the full Islamic culture of his age. He memorised the Qur'an with the reading of 'Asim. He knew a considerable amount of *hadith*, grammar, literature and poetry. He debated with the different sects on questions of dogma and related matters. He travelled to Basra to do this and sometimes remained there for a year. But then he moved on to *fiqh*.

Abu Hanifa turned to *fiqh* and immersed himself in it as he had done with the different sects, studying the *fatwas* of the great shaykhs of his time. He devoted himself to one of them and took benefit from him. He thought that a seeker of *fiqh* should take from various different shaykhs and live in their environment but devote himself to a particular distinguished *faqih* in order to be trained by him and so be able to understand the *fiqh* of subtle questions.

During his time, Kufa was the home of the *fuqaha'* of Iraq as Basra was the home of the different sects and those who delved into the principles of dogma. Kufa was the intellectual environment which influenced him. Explaining that, he said, "I was situated in a lode of knowledge and *fiqh*. I sat with its people and devoted myself to one of their *fuqaha*'."

Abu Hanifa devoted himself to Hammad ibn Abi Sulayman, studied *fiqh* with him, and remained with him until his death. There are three questions which need answering concerning this. One is the age of Abu Hanifa when he first stayed with Hammad and devoted himself to *fiqh*? The second concerns his age when he became an independent teacher? And the third concerns whether his devotion to his teacher was so total as to preclude contact with the knowledge of others.

There is, in fact, no way that we can know the age when Abu Hanifa turned to *fiqh* or took up with Hammad. All we know is that he stayed with Hammad until he died. He did not start teaching on his own until after Hammad died when he took the latter's place in his circle which was vacated by his death. Hammad died in 120 AH when Abu Hanifa must have been in his forties. So Abu Hanifa did not teach independently until after he was forty and fully developed, physically and intellectually. He thought about becoming independent before that, but did not do so.

It is related from Zafar that Abu Hanifa said about his connection to his shaykh Hammad, "I accompanied him for ten years and then my self urged me to seek leadership and I wanted to withdraw and have my own circle. One day I went out in the evening resolved to do so that but when I entered the mosque, I saw that I would not be happy to withdraw from him and went and sat with him. That night Hammad heard that a relative of his in Basra had died leaving property and had no other heir but him. He told me to sit in his place while he was away. I replied to questions I had not heard answered by him and wrote down my replies. When he returned I showed him the questions – there were about sixty of them. He agreed with me on forty and disagreed on twenty. I decided not to leave him until he or I died and that was what I did."

It is reckoned that he was with him for eighteen years and it is related that he said, "I came to Basra and thought that I would not be asked about anything which I could not answer. Then they asked me about things which I could not answer so I decided that I would not leave Hammad until he or I died. I kept his company for eighteen years."

If we study his life, it will be seen that this was not exclusive since he often went on *hajj* to the House of Allah, and in Makka and Madina he met a number of scholars, many of whom were *Tabi'un* and his encounter with them was only for the sake of knowledge. He related *hadiths* from them, debated *fiqh* with them, and studied their methods. Thus he had many shaykhs. There were also those from whom he related regarding the different sects. It is confirmed that he studied with Zayd ibn 'Ali Zayn al-'Abidin and Ja'far as-Sadiq, who were Shi'ite Imams, and 'Abdullah ibn Hasan. He studied with some of the Kaysaniyya who believed in the return of the hidden *mahdi*.

So he met and studied with other scholars while he was with Hammad, especially the *Tabi'un* who had learned directly from the Companions and were distinguished for *fiqh* and *ijtihad*. He stated, "I learned the *fiqh* of 'Umar, the *fiqh* of 'Ali, the *fiqh* of 'Abdullah ibn Mas'ud and the *fiqh* of Ibn 'Abbas from their companions."

His replacing Hammad ibn Abi Sulayman

When Abu Hanifa was in his forties, he took the place of his shaykh, Hammad, in Kufa and began to teach his students regarding the problems they presented for *fatwa*, cases, analogies and examples with his capable, orderly intellect and direct, logical mind and thus set up that method of *fiqh* from which the Hanafi school is derived. However, before continuing to discuss the course of his life and what is connected to it, we must first consider two further important aspects of his life: his livelihood and source of income and how the events of his time affected him.

Historical deduction leads us to conclude that Abu Hanifa's father and grandfather were wealthy merchants, and it is probable that they traded in *khazz*-silk which was a very profitable business. Abu Hanifa carried on in the family business until his conversation with ash-Sha'bi after which he devoted himself to knowledge. Did he give up commerce altogether? The transmitters are agreed that he did not but remained a merchant until his death. They mention that he had a partner and it appears that this partner enabled him to continue to seek knowledge, teach *fiqh* and transmit *hadith*. This trustworthy partner must have prevented him from having to go to the markets. There were other scholars who combined trade and knowledge such as Wasil ibn 'Ata', the shaykh of the Mu'tazilites who was Abu Hanifa's contemporary. He was born in the same year and was a Persian like him. He also lived off his trade and had a partner who was a relative and dealt with business on his behalf so that he could devote himself to his studies.

Abu Hanifa, the merchant, had four qualities connected to the behaviour of people in business which made him a perfect example of the upright merchant just as he was in the first rank among scholars:

• He was wealthy and not controlled by greed which impoverishes souls. This may be due to having grown up in a wealthy home and never having tasted need.

• He was very trustworthy in all he did.

• He was generous and Allah protected him from avarice.

• He was very devout and religious. He worshipped a lot, fasting in the day and praying at night.

These qualities combined to define his business dealings so that he was unusual among merchants. Many people compared him to Abu Bakr as-Siddiq in that respect. It was as if by imitating Abu Bakr's example and proceeding on his path, he was one of the *Salaf* who are followed. Both his buying and selling were trustworthy. A woman brought a silk garment to sell and he asked, "How much is it?" She replied, "A hundred." He said "It is worth more than a hundred. How much?" She kept increasing it by hundreds until she reached four hundred and he said, "It should be more than that." She said, "You are mocking me." He said, "Bring a man to value it." She brought a man and he bought it for five hundred.

Thus we see that he was circumspect in buying as well as selling and did not see the heedlessness of the seller as something to be taken advantage of, but thought that it was necessary to guide the person correctly. When he was the seller, he would sometimes forgo profit if the buyer was weak or a friend, alternatively, he would give him some of his excess profit.

A woman once came to him and said, "I am weak and I put myself in your hands. Sell me this garment for what it cost you." He said, "Take it for four dirhams." She retorted, "Do not mock me. I am an old woman." He said, "I bought two garments and sold one of them for the cost of both less four dirhams. This garment is then worth four dirhams."

Another time a friend came to him and asked him for a silk garment of a certain description and colour. He told him, "Be patient until it comes and I will get it for you, Allah willing." That happened before a week had passed and he took the garment to his friend and said to him, "What you needed has arrived." "How much is it then?" the friend asked. "A dirham," Abu Hanifa replied. He said, "I did not think you would mock me." He said, "I am not mocking you. I brought two garments for 20 dinars and a dirham. I sold one for twenty dinars and this remains for a dirham."

There is no doubt that such behaviour involves giving or it is alms in the form of buying and selling. It is not usual commerce. Rather, it tells us about the inner character of that great merchant in himself, his trustworthiness, intelligence, *deen* and fidelity, and illustrates the generosity in his heart.

He was very distressed about anything which was tainted by the possibility of wrong action, even if such was unlikely. If he thought that there was any wrong action involved in a transaction, or suspected it in connection with any property he had, he would take it and give it as charity to the poor and needy. It is

reported that he sent his partner, Hafs ibn 'Abdu'r-Rahman, with some goods and told him that there was a fault in one garment and that he must make the fault clear when he sold it. Hafs sold the goods and forgot to point out the flaw and he did not know who had bought it. When Abu Hanifa learned of that, he gave the entire value of the garment away as charity. (*History of Baghdad,* pt. 13, p. 58)

In spite of this scrupulousness and not being satisfied with anything that was not absolutely lawful, his trade was profitable and so he often spent on shaykhs and *hadith* scholars. It states in *The History of Baghdad*: "He used to accrue profit from one year to the next and he would use it to provide for the requirements of the shaykhs and scholars: their food and garments and all their needs. Then he would give the remaining dinars of profit to them and say, "Buy what you need and only praise Allah. I have not given you any money. It is simply part of Allah's bounty to you." (pt. 13, p. 360)

The profit of his trade was used to preserve the dignity of scholars and provide for their needs and to enable people of knowledge to dispense with official stipends. He was also keen about his appearance which was reported to be good. He was very concerned about his clothes and chose the best so that his cloak was worth thirty dinars. He had a good appearance and wore a lot of scent. Abu Yusuf said, "He used to take care of even his sandal straps so that he was never seen with a broken strap."

In the same way that he was concerned with his own attire and appearance, he was also concerned with that of others. For instance, it is reported that he saw one of his companions wearing a poor garment and ordered him to wait until the assembly had departed so that he alone remained. He told him, "Lift the prayer mat and take what is under it." The man lifted it and there was 1000 dirhams under it. He told him, "Take these dirhams and change your state with them." The man said, "I am wealthy and well-off. I do not need it." He told him, "Have you not heard the *hadith*, 'Allah loves the trace of his blessing to appear on His servant'? For this reason you must change your state, so that your friend is not grieved by you."

His position in respect of the revolutionary movements of his time

We know turn to something which had a strong effect on the course of Abu Hanifa's life: his position in respect to the revolutionary movements of his time, the extent of their effect on him, what assitance he gave to the instigators, and what was his relationship with those in authority. It is vital to ascertain these matters since the trial which ended his life was connected to them to the extent that one could say, it was a case of direct cause and effect. What took place was connected to something which had happened in his youth.

Abu Hanifa lived for fifty-two years under Umayyad rule and eighteen years under Abbasid rule. He experienced both Muslim dynasties. He knew the Umayyads when they were strong and when they were in their decline. He experienced the Abbasid state when it was in a missionary stage in the Persian lands, when it was emerging newly-fledged from its hidden lair, and then when it became a movement which defeated the Umayyads and wrested sovereignty from them, imposing on the people an authority which they considered to be religious because its khalifs were among the relatives of the Messenger of Allah. So the people were impelled to it by both desire and terror.

Abu Hanifa was aware of this and it had an effect on him, even if it is not known that he participated with those who rebelled. Most of the reports about his position make it clear that his heart was with the 'Alawites when they rebelled first against the Umayyads, and then later when they rebelled against the Abbasids.

It is related that when Zayd ibn ‘Ali Zayn al-‘Abidin rebelled against Hisham in 121 AH, Abu Hanifa said, “His going forth resembles that of the Messenger of Allah on the Day of Badr.” He was asked, “Did you not stay behind?” He said, “People’s trusts kept me from him. I offered them to Ibn Abi Layla but he did not accept them. So I feared that I would die without them being known.” It is reported that he said about not accompanying Zayd, “If I had known that people would not disappoint him as they did his father, I would have striven with him because he is a true Imam. Nonetheless I helped him with my property and sent him 10,000 dirhams and told the messenger, ‘Give him my excuse.’” (*al-Manaqib*, al-Bazzazi, pt. 1, p. 55)

This indicates that he considered the rebellion against the Umayyads to be legally permissible when there was a just Imam like Imam Zayd and that he wanted to bear arms with him. But the sources do not indicate that he did not anticipate a good result. The action was correct, but nothing was achieved because of lack of support. Nonetheless he supported him with money.

Imam Zayd’s rebellion ended in his death in 132 AH, after which his son Yahya rebelled in Khorasan in 135 AH and was also killed. Then ‘Abdullah ibn Yahya continued to pursue their cause and fought against the general whom Marwan II sent to Yemen at the end of the Umayyad era, and he too was killed as had been the fate of his fathers before him.

So this illustrates what Abu Hanifa thought of Zayd ibn ‘Ali and how he compared his expedition to that of the Prophet at Badr. He considered him to be a just Imam and supported him financially so as not to be one of those who stayed behind. He saw him slain, and then his son was killed after him and then his grandson as well. It is likely that he was distressed by their deaths. When scholars are angry, their tongues can accomplish what swords cannot. Their blows are stronger and sharper. What befell him from the Umayyad governor in Iraq in 130 AH supports that. It is stated in al-Makki’s *The Virtues of Abu Hanifa* and in other sources and history books that Yazid ibn ‘Umar ibn Hubayra, Marwan’s governor of Iraq, sought out Abu Hanifa to appoint him *qadi* or to put him in charge of the exchequer. Sedition was rife at that time in Iraq, Khorasan and Persia because of Abbasid agitators.

This is what al-Makki says about what happened:

> Ibn Hubayra was the governor of Kufa for the Umayyads. There were seditions in Iraq and he gathered the *fuqaha’* of Iraq at his door, including Ibn Abi Layla, Ibn Shibrama, and Da’ud ibn Abi Hind. He appointed each of them to high post. Then he sent for Abu Hanifa and wanted to put the seal in his hand so that no document would be implemented except at the hand of Abu Hanifa. But Abu Hanifa refused and Ibn Hubayra swore that if he did not accept, he would flog him.
>
> Those *fuqaha’* said to him, “We beseech you by Allah not to destroy yourself. We are your brothers and we all are forced to comply in this business and can find no way to avoid it.”
>
> Abu Hanifa said, “If he wanted me to restore the doors of the Wasit Mosque for him I would not undertake to do it. What should I do when he wants me to write that a man should have his head cut off and seal the document? By Allah, I will never become involved in that!”
>
> “Let your companion alone.” said Ibn Abi Layla to the others. “He is right and others are wrong.”
>
> The authorities imprisoned Abu Hanifa and he was flogged on consecutive days. The flogger came to Ibn Hubayra and told him, “The man will die.”
>
> Ibn Hubayra said, “Tell him: ‘We will banish anyone who lies to us.’”
>
> He asked Abu Hanifa to submit but he said, “If he were to ask me to restore the doors of the mosque for him, I would not do it.”
>
> Then the flogger met with Ibn Hubayra again who said, “Is there no sincere adviser of this prisoner to ask me for a reprieve which we can grant him?”
>
> That was mentioned to Abu Hanifa who said, “Let me consult my brothers.” He did so and Ibn Hubayra commanded that he be let go and he went Makka in 139 AH. He remained in Makka until the Abbasids came and then returned to Kufa during the time of al-Mansur.”

So al-Makki and others mention that Ibn Hubayra offered a post to Abu Hanifa and he refused. He thought that Ibn Hubayra wanted to appoint him to some office to confirm his loyalty or prove his suspicions against him. He offered him the seal but Abu Hanifa refused. He asked him to accept a general post but he refused even though he was severely beaten until his head was swollen and breathing became difficult for him. He did not weaken or weep until he learned that his mother was grieved by what had happened to him. Then his eyes filled with tears as he was pained by her pain and compassionate on her behalf. Such is the truly strong person; he is not concerned for himself but only concerned for others.

Abu Hanifa fled to Makka after the flogging and remained there from 130 AH until the Abbasids were in power. He was safe in the Haram while the seditions were rife throughout the khalifate. He devoted himself to the *hadith* and *fiqh* which came from the knowledge of Ibn ‘Abbas. He met his students there and discussed knowledge with them. Al-Mansur came to power in 136. Abu Hanifa was in Makka from 130 AH which means he stayed at least six years in the vicinity of the Haram.

It also reports in *The Virtues* by al-Makki that Abu Hanifa was in Kufa when Abu’l-‘Abbas as-Saffah entered it and asked for people to give him their allegiance.

> When Abu’l-‘Abbas came to Kufa, he gathered the scholars and said, “This command has come to the people of the House of your Prophet and Allah has brought you good and established the truth. You are the scholars and it is more proper for you to assist it. You will have gifts, honour and hospitality from the property of Allah as you wish. So pledge allegiance to your Imam as evidence for and against you and security for your Life to Come. Do not meet Allah without an Imam and be those who have no evidence on their behalf.”
>
> The people looked at Abu Hanifa and he said, “Do you want me to speak on my own and your behalf?”
>
> “We do,” they said.
>
> “I praise Allah,” he said, “Who has conveyed the right of Imamate to the kin of His Prophet and ended for us the oppression of injustice and has released our tongues with the truth. We give you homage based on the command of Allah and fidelity to you by your contract until the Hour comes. Allah has not removed this matter from the kin of His Prophet, may Allah bless him and grant him peace.”
>
> As-Saffah answered him well. “Someone like you speaks for the scholars. They did well to choose you and you conveyed well.”

This would suggest that Abu Hanifa was in Kufa when as-Saffah came there and received allegiance before 136 AH. This conflicts with the report that he did not come to Kufa until al-Mansur was khalif, i.e. in 136 AH or afterwards.

I think it is possible to reconcile the two. If Abu Hanifa fled to Makka from Ibn Hubayra and stayed there until Ibn Hubayra and his dynasty were out of Iraq, he could have gone to Kufa when as-Saffah went there and pledged allegiance to him. However, the sedition continued in Iraq and matters were not completely settled so he returned to Makka. He may have gone back and forth between the two cities until things were in order in the time of al-Mansur. Then he came back to Kufa and stayed there and restored his circle in the mosque. His circle did not resume until things were more settled in Iraq and the Abbasids firmly established. That only happened during the khalifate of al-Mansur.

His relations with the Abbasids

That Abu Hanifa welcomed the arrival of the Abbasids is indicated by his behaviour with Abu’l-‘Abbas as-Saffah. This is in harmony with his past experience because he had observed the oppression which ‘Ali’s descendants had suffered at the hands of the Umayyads. When the Abbasids first came to power they did so as a dynasty which had started as a Shi‘ite movement, stating that they would hand over power to one of the descendants of ‘Ali. Once in power, the dynasty was Hashimite, but from descendants of the Prophet’s uncle not ‘Ali. They then had to put down ‘Alawite rebellions on the part of those whom they in their turn had wronged.

Abu Hanifa continued to support the Abbasids on account of his love for the entire family of the Prophet. Al-Mansur used to bring him near to him, esteem him and offer him generous gifts but he refused them with gentleness and use of stratagems. An estrangement took place between al-Mansur and his wife because he inclined away from her and she asked him to be fair. He asked her whom she would be content with as an arbiter and she chose Abu Hanifa. Al-Mansur was happy with that and Abu Hanifa was summoned.

He said to him, “Abu Hanifa, this free woman contends with me. Give me my right against her.”

Abu Hanifa said, “Let the Amir al-Mu’minin speak.”

“Abu Hanifa,” he replied, “How many wives can a man marry at the same time?”

"Four," he replied.
"How many slavegirls is he allowed?"
"As many as he likes," was the reply.
"Is anyone permitted to say anything different?"
"No," replied the Imam.
"You have heard," said the khalif.

But Abu Hanifa continued, "Allah has allowed this to the people of fairness. If, however, anyone is not fair or fears that he will not be fair he should only have one. Allah Almighty says, *'But if you are afraid of not treating them equally, then only one.'* (4:3) So we must follow the discipline of Allah and take heed of His admonitions."

Al-Mansur was silent for a long time. Then Abu Hanifa got up and left. When he reached his house, the khalif's wife sent him a servant with money, clothes, a slavegirl and an Egyptian donkey. He refused the gift and told the servant, "Give her my greeting and tell her that she endangers my *deen*. I did that for Allah, not desiring anything from anyone."

It is not known that Abu Hanifa was against Abbasid rule until punitive action was taken against the sons of 'Ali and there was a strong dispute between the Abbasids and them. It is known that he was loyal to the sons of 'Ali, partisan on their behalf, and that he preferred them, so it was natural that he should become angry when they were angry, especially when those who rebelled against al-Mansur were Muhammad an-Nafs az-Zakiya (Pure Soul) and his brother Ibrahim. Their father was one of those connected by scholarship to Abu Hanifa – *The Book of Virtues* mentions him as one of his shaykhs from whom he transmitted. When his sons rebelled, 'Abdullah was in al-Mansur's prison where he died after his sons were killed.

That is why we see words related from Abu Hanifa showing resentment against the Abbasids during the rebellion of these 'Alawites and after their deaths. It is clear that, at that time, he did not think that loyalty to the Abbasids was correct but, as had been the case with him in the past, his resentment never exceeded verbal criticism and stating his loyalty to the 'Alawites. He took no action. Such is the action of scholars who are only a little distracted from their knowledge by their devotion for those they love. Al-Mansur was aware of this and he overlooked it sometimes and sought information at other times until the tragedy occurred.

Muhammad Pure Soul rebelled against al-Mansur in Madina in 145 AH and was supported by the people of Khorasan and others but he was too far away for them to be able to help him. It is reported that in Madina, Malik issued a *fatwa,* permitting Muhammad to rebel. At-Tabari and Ibn Kathir state that he gave a *fatwa* commanding people to pledge allegiance to Muhammad ibn 'Abdullah and that when people said that they had already pledged allegiance to al-Mansur, he said that they had been forced and that a forced allegiance is not binding. So people pledged allegiance. Malik stayed in his house. The affair ended when Muhammad was slain, and the same fate befell his brother Ibrahim after he had rebelled in Iraq, takes several cities and attacked Kufa.

Some people think that this alleged *fatwa* by Malik was the reason that he was flogged and injured. Abu Hanifa held an even stronger position about the matter than Malik. He openly supported them in his classes. Things reached the point where one of the generals of al-Mansur refused to go out to fight him.

It is reported that al-Hasan ibn Qahtaba, one of al-Mansur's generals, went to Abu Hanifa and said, "My situation is not hidden from you. Can I repent?"

The Imam said, "If Allah knows that you regret what you have done. If you can choose between killing a Muslim and being killed yourself, choose your own death before his. Then you will have a contract with Allah if you do not go back on it. If you fulfil that, you have repented."

"I have done that," said Hasan. "I make a contract with Allah that I will never again kill a Muslim."

Then Ibrahim ibn 'Abdullah rebelled and al-Mansur com-manded Hasan to go against him. He went to the Imam and told him what had happened and he said, "The moment of your repentance has come. If you fulfil your promise, you have repented. Otherwise, you will be punished for the first and last."

So he was serious about his repentance, prepared himself for execution, and went to al-Mansur and said, "I will not go against this man. Allah is owed obedience in everything you do as far as you are able. I will have a fuller portion with Him. If it is disobedience, I am responsible."

Al-Mansur was angry and Hamid ibn Qahtaba, his brother, said, "We have suspected his mind for a year. He seems muddled. I will go. I am more entitled to excellence than him." So he went.

Al-Mansur asked one of his confidants, "Which *faqih* does he go to?" They said, "He frequents Abu Hanifa."

If this is true, al-Mansur would regard it as a very dangerous thing for the state because Abu Hanifa had gone beyond the bounds of simple criticism and emotional loyalty into the sphere of positive action, even if his action was confined to a *fatwa*. The *faqih* must give good counsel in the *deen* of Allah and not recommend corruption.

Whatever the truth of this transmission, it is reliably confirmed that Abu Hanifa openly stated his criticism of the khalif and his behaviour towards the ‘Alawites. That is in accord with his past behaviour and his links to the descendants of ‘Ali. He was linked with Zayd, as we said, and also had a firm connection to Ja‘far as-Sadiq. Muhammad al-Baqir was also connected to him. He was a student of ‘Abdullah ibn Hasan, the father of Ibrahim and Muhammad, as we previously stated. They had his loyalty and he was pained by what befell them.

Abu Hanifa’s position was not hidden from the ever-watchful al-Mansur, especially in Kufa. That is why he wanted to test his loyalty and obedience when the opportunity arose. He was in the process of building Baghdad and wanted to appoint Abu Hanifa *qadi* there but he refused. Al-Mansur insisted on him accepting some post, whatever it was. So his aim was evident. Abu Hanifa perceived his intention and wanted to avoid it. It is related that eventually he agreed to count the bricks in the construction.

At-Tabari summarised the situation in this way.

> Al-Mansur wanted Abu Hanifa to be in charge of the judges but he refused. Al-Mansur swore that he must accept a post while Abu Hanifa swore that he would not. So he put him in charge of overseeing the construction of the city; making the bricks and getting men for the work. He undertook that until they finished the city wall next to the ditch. Al-Haytham ibn Adi mentioned that al-Mansur offered Abu Hanifa the post of *qadi* but he refused. He swore that he would not leave him alone until he undertook a post for him. That was reported to Abu Hanifa and he called for a measuring rod and counted the bricks and thus fulfilled al-Mansur’s oath. Al-Mansur ignored Abu Hanifa for a time, but not completely. Things were reported to him from time to time, but he deferred taking action.

Before going on to mention some of these matters which made al-Mansur do what he did without right, we can state that the tragedy which befell Abu Hanifa was not the result of the rebellion of Ibrahim ibn ‘Abdullah, the brother of the Pure Soul. Abu Hanifa died in 150 AH, five years after the rebellion and death of Ibrahim.

An analytic approach forces us to reject what al-Khatib relates in *The History of Baghdad* from Zafar: “Abu Hanifa made strong public statements in the time of Ibrahim. I told him, ‘By Allah, you are in his favour so spare the ropes from our necks.’ It was not long before a letter came from al-Mansur to ‘Isa ibn Musa ordering him to take Abu Hanifa to Baghdad. He lived for only fifteen days after that.”

As Ibrahim was killed in 145 AH, he could not have been taken directly following that since five years had passed. History books often contain errors of this sort and it is necessary to exercise caution about accepting them.

After the ‘Alawite opposition to al-Mansur and his persecution of them and execution of their leaders, Abu Hanifa was not pleased with his rule. He was able to avert any harm from himself and directed himself to the path of knowledge. But from time to time he would make certain statements or things were revealed about his opinion of al-Mansur and his government. We will mention two instances which aroused al-Mansur’s suspicions about him.

One is when the people of Mosul rebelled against al-Mansur. Al-Mansur imposed a condition on them which stated that if they rebelled, their blood was lawful for him. So al-Mansur gathered the *fuqaha’* including Abu Hanifa and said, “Is it not true that the Messenger of Allah said, ‘Believers are those who abide by their preconditions’? The people of Mosul accepted a condition that they would not rebel against me. They have rebelled against my governor and so their blood is lawful for me.” A man said, “Your hand is extended over them and your word is accepted among them. If you pardon, pardon befits you. If you punish, it is according to what they deserve.”

He asked Abu Hanifa, “What do you say, shaykh? Do we not have the khalifate of the Prophet and a house of security?” He said, “You imposed on them a precondition which they were incapable of fulfilling and you stipulated for them something which is not within your right. The blood of a Muslim is only lawful on account of one of three things. If you take them, you take what is not lawful. The precondition of Allah has more right to be observed.” Al-Mansur commanded that the session be ended and they dispersed. Then he called him and

said, "Shaykh, the position is as you stated. Go to your city but do not give people a *fatwa* which will disgrace your ruler and extend the domain of the Kharijites."

Here is what we find in *al-Kamil* by Ibn al-Athir on the events of 148 AH:

> The populace of Hamdan were Shi'ites and al-Mansur decided to send armies to Mosul and annihilate its inhabitants. He summoned Abu Hanifa, Ibn Abi Layla and Ibn Shibrama and told them, 'The people of Mosul gave me their word that they would not rebel, and that, if they were to do so, then their blood and property would be fair game. They have rebelled.' Abu Hanifa was silent. The two other men said, 'If you pardon your subjects, you are worthy of that; and if you punish, it is because they deserve it.' He said to Abu Hanifa, 'I see you are silent, shaykh.' He replied, 'Amir al-Mu'minin, they made a contract they had no right to make. Do you think that if a woman made her private parts lawful without a marriage contract or ownership, it would be permitted to have intercourse with her?' 'No,' replied the former. 'No,' Abu Hanifa continued, 'So how can it be permitted for the people of Mosul ?' Al-Mansur commanded that Abu Hanifa and his companions return to Kufa. (pt. 5, p. 217)

There are some mistakes in the details of this account – for instance, mentioning Ibn Shibrama as being with him on this occasion when the events were in 148 AH whereas Ibn Shibrama died in 144, as Ibn al-Athir himself says elsewhere.

The second incident which showed his view of al-Mansur's government is when the latter sent him a gift to test to see if he would accept and he made an excuse about it. We read in *The Virtues* by al-Makki:

> Al-Mansur sent him a gift of 10,000 dirhams and a slavegirl. 'Abdu'l-Malik ibn Hamid, al-Mansur's wazir, was a noble and generous man. He told Abu Hanifa when he refused it, "I tell you by Allah, the Amir al-Mu'minin is looking for a way to get at you. If you do not accept, you will confirm his suspicions about you." He refused and so 'Abdu'l-Malik said, "As for the money, give it out in stipends. As for the slavegirl, accept her from me or make an excuse so that I can excuse you to the Amir al-Mu'minin." Abu Hanifa said, "I am too weak for women. I am old and I do not consider it lawful to accept a slavegirl with whom I cannot have relations and I would not dare to sell a slavegirl which came from the property of the Amir al-Mu'mimin."

Similar incidents took place between Abu Hanifa and al-Mansur and so he kept him under surveillance. There were those in al-Mansur's retinue who provoked him against Abu Hanifa and made him suspect his statements and *fatwas*, but he continued to make statements and *fatwas* which he believed to be true, unconcerned about whether people were pleased or angry as long as he was pleasing to Allah, complying to the Truth and it satisfied his own conscience.

Al-Khatib reported that Abu Yusuf said, "Al-Mansur summoned Abu Hanifa. Ar-Rabi', the chamberlain of al-Mansur, who was hostile to Abu Hanifa, said, 'Amir al-Mu'minin, Abu Hanifa contradicts your grandfather, 'Abdullah ibn 'Abbas. He stated that when someone swore an oath and then made an exception a day or two later, the exception was permitted. But Abu Hanifa says that the exception is not allowed unless it is simultaneous with the oath.' Abu Hanifa said, 'Amir al-Mu'minin, ar-Rabi' claims that you have no allegiance from your army.' 'How is that?' he asked. He said, 'They swear to you and then return to their homes and make an exception, and so their oaths are invalid.' Al-Mansur laughed and said, 'Rabi', do not start with Abu Hanifa!' When he left, ar-Rabi' said, 'You wanted to spill my blood!' 'No,' he replied, 'you wanted to spill mine, and I saved you and saved myself.'"

Al-Khatib also said, "Abu'l-'Abbas at-Tusi had a bad opinion of Abu Hanifa and Abu Hanifa was aware of it. Abu Hanifa went to al-Mansur at a time when there were a lot of people present. At-Tusi said, 'Today I will finish with Abu Hanifa.' So he came to him and said 'Abu Hanifa, the Amir al-Mu'minin commands one of us to strike off the head of another man without knowing who it is. Is he permitted to do that?' 'Abu'l-'Abbas,' the Imam replied, 'does the Amir al-Mu'minin command what is right or falsehood?' 'What is right,' he replied. Abu Hanifa said, 'Carry out the right wherever it is and you will not be questioned about it.' Then Abu Hanifa said to those near him, 'This one wanted to bind me so I tied him up.'"

It should be mentioned here that a position taken by Abu Hanifa may have provided al-Mansur with a means of harming him because Abu Hanifa would annul the judgements of the *qadi* of Kufa when they were contrary to his opinion and declare that they were wrong at the time they were issued and to those who had

received a positive or negative judgement. That provoked the *qadi* against him and he thought ill of him and was moved to complain about him to the amir.

According to *The History of Baghdad*, Ibn Abi Layla, who was *qadi* in Kufa, examined the case of a madwoman who had said to a man, "Son of two fornicators!" He carried out the *hadd* on her while she was standing in the mosque and she received two *hadds* since she had slandered both the father and the mother. Abu Hanifa heard about that and stated, "He erred about her in six ways. He carried out the *hadd* in the mosque and *hudud* are not carried out in mosques; he flogged her while standing and women are flogged sitting; he imposed one *hadd* for the father and another for the mother but if a man were to slander a group, he would receive only one *hadd*; he combined two *hadds* and two *hadds* are not combined; a madwoman is not subject to a *hadd*; and the *hadd* was for the parents who were absent and failed to attend and claim."

After hearing about this, Ibn Abi Layla went to the amir and complained to him. The amir put Abu Hanifa under an interdiction, saying, "Do not give *fatwa*." He did not give *fatwa* for some days and then a messenger came from the authorities who had been instructed to present some questions to Abu Hanifa so that he could give *fatwa* on them. Abu Hanifa refused, saying, "I am barred." The messenger went to the amir who said, "I have given him permission." So he sat to give *fatwa*.

In his criticism, Abu Hanifa did not differentiate between a judgement of the *qadi* which was binding on the public, right or wrong, and the *fatwa* that a *faqih* made which did was not binding on anyone. Sometimes he criticised a *fatwa* that he thought was wrong more severely than an actual judgement because injustice might develop from it. Injustice pained him greatly and an incorrect *fatwa* could result in injustice to people in their lives and property.

Whatever the position of Abu Hanifa about the judgements of the *qadi*, Ibn Abi Layla did not accept the criticism of Abu Hanifa cheerfully. He was hostile to him because of that criticism and perhaps enmity led him to try to harm Abu Hanifa. Thus it is reported that Abu Hanifa said about him, "Ibn Abi Layla seeks to make lawful in regard to me what I would not make lawful for any living creature." If we blame Abu Hanifa for the severity of his criticism of the judgements of Ibn Abi Layla and his lack of restraint in making it public, we also blame the *qadi* of Kufa for allowing that criticism to provoke enmity between them.

Al-Mansur was annoyed by Abu Hanifa. Indeed, he became fed up with him when he learned of his leaning towards the 'Alawites which was confirmed by various experiences he had had with him. But he could find no way of dealing with him because he did not go beyond his teaching circle and he was not suspect in his *deen* or his outward actions. He was a firm, reliable, generous scholar to whom people travelled because of his knowledge, excellence, guidance and fear of Allah. There was no way to act against him as long as he took no action or rebelled. An opportunity eventually presented itself when he offered him the position of *qadi* and he refused to accept it.

He asked him to be *Qadi* of Baghdad which would have made him the Chief *Qadi* of the state. If he accepted, that would indicate his sincerity or his absolute obedience to al-Mansur. If he refused, that would provide al-Mansur with a means to get at him publicly without damaging his religious reputation because people thought Abu Hanifa righteous and in this case his refusal was a refusal to accept a necessary duty and he could be impelled to do that by force. Any harm inflicted was to force him to accept something which would benefit the general public, not to trick him or wrong him.

He had sometimes criticised the decisions of the *qadis* and so it was appropriate for him to sit in the highest seat of judgement in order to guide the judges to what was obligatory and impel them to what was correct. He was the *faqih* whose *fatwas* decided the correctness or error of judgements. If he refused that office, it meant that his prior criticism was merely destructive since he now had the opportunity to be constructive and had refused. Since he was the foremost *faqih* in the view of the people of Iraq, the khalif was correct in wanting to make him the Chief *Qadi*. If he refused, he could be forced to accept the post. So when he refused, al-Mansur punished him by flogging and imprisonment or simply imprisonment, according to which version of the story is correct. We will see what the sources state.

We read in *The Virtues* by al-Makki:

> When Abu Hanifa was taken to Baghdad, he came out with a shining face and said, "This man has summoned me to be *qadi* and I told him that I am not fit. I know that the claimant must provide evidence while the oath absolves the one who denies the charge. The only one fit to be *qadi* is the one whose personality is such that he can command authority over you, your children, and your leaders. I am not like that. You summon me and I experience no relief until I part from you." He said, "You do not accept my gift." I said, "I have returned whatever money the Amir al-Mu'minin sent. If that is the

> gift, I accept it. The Amir al-Mu'minin has connected me to the treasury of the Muslims. I have no right to their money. I am not one of those who fights for them so that I should take what the fighter takes. I am not one of their children so as to take what their children take. I am not one of their poor so as to take what the poor take." He said, "You will be *qadi* in what they need from you."

Al-Bazzari said in *The Virtues*,

> Al-Mansur imprisoned Abu Hanifa to force him to become Chief *Qadi* and he received 110 lashes. He was released from prison on the basis that he would stay at home and he was asked to give *fatwa* regarding the judgements presented to him. Al-Mansur used to send questions to him but he did not give *fatwa*. He ordered him to be re-imprisoned. Abu Hanifa was imprisoned again and was harsh and severe to him.

We read in the *History of Baghdad*,

> Al-Mansur sent for Abu Hanifa, wanting to appoint him *qadi*, but he refused. Al-Mansur swore that he would do it and Abu Hanifa swore that he would not. Al-Mansur swore again that he would do it and Abu Hanifa swore that he would not. Ar-Rabi,' the chamberlain, said, "Do you not see that the Amir al-Mu'minin has sworn?" Abu Hanifa said, "The Amir al-Mu'minin can expiate his oaths better than I can." He refused the appointment therefore al-Mansur ordered his imprisonment.

Ar-Rabi' ibn Yunus said:

> I saw the Amir al-Mu'minun clash with Abu Hanifa over the qadiship. Abu Hanifa said, "Fear Allah and do not give your trust except to the one who fears Allah. By Allah, I am safe from favouritism but how can I be safe from anger? If you threaten to drown me in the Euphrates unless I accept the appointment, I would prefer to be drowned. You have courtiers who need those who honour them for your sake. I am not fit for that." Al-Mansur said to him, "You lie, you are fit." Abu Hanifa retorted, "I have declared myself unfit so how can it be lawful for you to appoint someone who is a liar as *qadi*?"

There are a number of points to be noted in these stories. Firstly, when Abu Hanifa refused the qadiship, he refused it not only because al-Mansur appointed him, but because he saw it as a perilous post and thought that perhaps he would not be strong enough to do it, that his conscience would not be strong enough to bear its burdens and his will not strong enough to contain his feelings. He saw the post of *qadi* as a trial which made all other trials insignificant. His refusal does not necessarily have a political cause.

Secondly, al-Mansur was suspicious about the cause behind Abu Hanifa's refusal and did not believe that it was based purely the avoidance of bearing the responsibility of judgements. That is why he specifically asked for the reason he had refused the stipend, even if there was no connection between refusing to be *qadi* and refusing the stipend, as this question would indicate. Al-Mansur believed that his grounds for suspicion were confirmed. Moreover, the retinue around al-Mansur provoked him when he was undisturbed and directed his attention to Abu Hanifa.

The third point is that Abu Hanifa was not diplomatic in his replies. He did not use honeyed words and did not use devices to extricate himself. He was forthright with the truth and unconcerned about the consequences. He endured them. So he refused to be *qadi* and refused to give *fatwa* and clearly stated that he refused the stipend because it was from the Muslim treasury and that it was not lawful for him. Then the khalif took an oath and so did he without concern. Rather he thought of the ultimate end and of his reward with Allah.

Eventually the ordeal befell Abu Hanifa. The transmitters agree that he was imprisoned and that he did not sit to give *fatwa* or teach after that, since he died during or after this ordeal. Sources differ as to whether he died in prison after the flogging, which most say, or died in prison by being poisoned according to those who say that al-Mansur was not content to flog him, but poisoned the shaykh to hasten his end, or was released before he died and then died at home while refusing to teach and meet people. These three versions are mentioned in his biographies and elsewhere.

It is related that he stayed in prison after the flogging until he died, and Da'ud ibn Rashid al-Wasiti said, "I was present when the Imam was tortured to force him to accept the appointment as *qadi*. He was taken out

each day and given ten lashes until he had received 110 lashes. He was told, 'Accept the qadiship!' and he would reply, 'I am not fit.' The beatings continued and he said silently, 'O Allah, put their evil far from me by Your power.' When he continued to refuse, they poisoned him and so killed him."

Al-Bazzari says that after he was imprisoned for a time, al-Mansur spoke to some of his close advisors and brought him out of prison. He refused to give *fatwa*, hold audience with people or leave his house and remained so until his death.

We incline to this final version because it tallies with the course of events and what we know of al-Mansur which is that al-Mansur did not want to appear to be an oppressor of knowledge and scholars. When events forced him to punish Abu Hanifa, he produced a justification which had an adequate logical basis: to force him to act as *qadi*. He did not punish him out of simple malice. When this failed to produce a result, he did not insist on it so as to disclose his true motive. The general populace had also to be taken into account so he did not continue with the punishment. Sources agree that he ordered that he should be buried beside Abu Hanifa's grave. It is reported that al-Mansur prayed over his grave after his death and al-Mansur would not have done that if he had died in his prison.

Abu Hanifa died the death of the true men and martyrs in 150 or 153 AH. The first date is sounder. When he died, he left instructions that he should not be buried in any land which the ruler had misappropriated. When he heard this, al-Mansur said, "Who will save me from Abu Hanifa, both when he was alive and now when he is dead?"

He died in Baghdad and was buried there. Reports agree about that. But did his teaching circle also move there? No historian mentions that Abu Hanifa moved his centre of teaching to Baghdad. All reports indicate that he remained teaching in Kufa until he stopped teaching and giving *fatwa*. After his ordeal, he did not resume teaching before his death. This does not mean that he did not have any teaching circle outside of Kufa. It is related that when he went on *hajj*, he gave *fatwa*, debated and studied, and at times he had a teaching circle in the *Masjid al-Haram*. We cannot deny that during the period in which he went to the Haram on account of the injustice of the Umayyad governor that he had a teaching circle in which he set forth his opinions and *fiqh*, even if the sources do not mention it, one way or the other.

He also had debates with the *fuqaha'* like those he had with al-Awza'i and there is a record of his studying some of the opinions of *fiqh* with Imam Malik and there were also many debates in Basra. Nonetheless, his principal school was in Kufa which is why he is known as 'the *Faqih* of Kufa'.

Chapter Two
The Knowledge of Abu Hanifa and its Sources

In the history of Islamic *fiqh*, there is no man both so highly praised and so severely criticised as Abu Hanifa, may Allah be pleased with him. This dichomtomy occurred because he was an independent *faqih* who had an independent method of thought as a result of deep study. Such a person must have admirers and detractors. Most of those who criticised him were incapable of following the course of his thinking or of understanding his perception. Many were narrow-minded and considered any method which involved more than the simple statements of the *Salaf* alone as being rejected innovation.

Some of his critics were very ignorant and knew nothing of his fear of Allah, integrity, great intellect and knowledge, and were unaware of his high position with the common and elite alike. It was almost within his own lifetime that lies were forged about him and that process continued apace after his death. On the other hand, there were also those who went to excess in his praise.

His contemporary, al-Fudayl ibn 'Iyad, a man renowned for scrupulousness, said about him, "Abu Hanifa was a *faqih*, a man known for *fiqh*, reasonably wealthy and known for graciousness towards all who visited him. He was steadfast in teaching knowledge both night and day. He had a good reputation and was often silent. He was a man of few words. When a question on the lawful or unlawful would come to him, he was good at pointing out the truth and he was loath to accept the ruler's money."

Ja'far ibn ar-Rabi' said, "I sat with Abu Hanifa for five years and never saw anyone silent longer than him. When he was asked a question of *fiqh*, sweat poured from him like a river before he spoke outloud."

His contemporary, Malih ibn Waki' said about him, "Abu Hanifa was very trustworthy. By Allah, he had a noble heart and preferred the pleasure of his Lord above everything. If swords had been used on him in the Cause of Allah, he would have endured that. May Allah have mercy on him and be pleased with him as He is pleased with the pious."

His contemporary, 'Abdullah ibn al-Mubarak, described him as 'the quintessence of knowledge.'

Ibn Jurayj observed about him at the beginning of his life, "He will have amazing importance in knowledge." After Abu Hanifa was an adult, he said, "He is the *faqih*. He is the *faqih*."

When Malik was asked about 'Uthman al-Batti, he said, "He was an average man." When he was asked about Ibn Shibrama, he said, "He was an average man." When he was asked about Abu Hanifa, he said, "If he had gone to these columns and formed an analogy which showed that they were made of wood, you would have thought that they were wood."

We cannot go into all the statements in praise of Abu Hanifa. All of his contemporaries, supporters or opponents, described him as a *faqih*. Perhaps the best description is that of Ibn al-Mubarak who said that he was 'the quintessence of knowledge'. He had the heart of knowledge and took it as far as it would go. He deduced questions, reached their essence and learned their basis and then built on them. He occupied himself with thought, knowledge and debates. Thus he debated with the *mutakallimun* and refuted the erroneous views of some of them and argued against various sects.

There were several treatises ascribed to him. He also has a *musnad* in *hadith* ascribed to him. If this ascription is true, he has a position in *hadith*. So his position in *fiqh* and extrapolation, understanding of *hadiths* and derivation of the causes of judgements and building on them is of the highest calibre. One of his contemporaries said that he did not know anyone with a better understanding of *hadith* than him. That was only because he derived the reasons behind the judgements, so that it was almost as if he did not turn to the outward words but understood the meanings and derived the intention behind them and connected that to similar matters and built upon it.

From where did Abu Hanifa obtain all this knowledge? What were his sources? What was his background? What enabled him to attain the high place given to him in the history of Islamic knowledge? The necessary background for turning a person towards distinction in knowledge comprises four things.

1. Innate qualities, or quasi-innate, or those which can be acquired which become like personal talents. In general, they are qualities which characterise a person's psychological disposition and intellectual gifts.

2. The mentors with whom a person studies, their effect upon him, and who define for him the method he chooses to follow or who show him the various methods by whose light the path for him to follow becomes clear.

3. Personal life and experiences and the events which touch his life or befall him which make him proceed in certain directions. Two individuals may have the same gifts and shaykhs but one will be successful and the other not, or he will set out on a path which does not lead to success because his personal life has ordained another path for him, and so the two go different ways.

4. The era in which he lives and the intellectual environment in which he liveds and in which his gifts flourishes.

We will look at each of these factors in turn.

Abu Hanifa's Qualities

Abu Hanifa had natural qualities which set him in the highest rank of scholars and he was characterised by the qualities of the true firm, reliable scholar. He had self-control and contained his feelings. He did not indulge in unnecessary or ugly words far from the truth. He once argued about a question on which Hasan al-Basri had given a *fatwa*. He stated, "Hasan erred." A man said to him, "You say that Hasan erred, son of a whore!" He did not redden or blanch. He said, "By Allah, Hasan erred and 'Abdullah ibn Mas'ud was correct." He used to say, "O Allah, if someone is annoyed by us, our heart is open to him."

This calmness and tolerance did not issue from a person with no feelings or stem from lack of emotion. He was a man with a sensitive heart and soul. It is related that one of those with whom he debated shouted at him, "Innovator! Heretic!" He rejoined, "May Allah forgive you. Allah knows that I am not that. I have not turned from Him since I knew Him and I only hope for His pardon and only fear His punishment." He wept when he mentioned the punishment. The man told him, "Pardon me regarding what I said." He said, "If any of the people of ignorance say something about me, I pardon them. As for the people of knowledge who say something about me, they are sinful. The slander of the scholars will cause something to remain after them."

So his calm was not an unfeeling one. It was the composure of someone who knows himself and is tranquil by his fear of Allah and is only concerned about what is connected to Allah and not what is connected to the dirt of people, like a clear unsullied sheet to which none of the harmful words of people stick. His composure was that of one who restrains himself and endures without attacking and dislikes the tempests which the self can provoke.

His independence of thought prevented him from losing himself in others' opinions. His shaykh Hammad recognised this quality in him. He used to encourage him to examine every case and not to accept any idea without examining it first. His independent thought made him see things as a free person, not subject to anything except for a text of the Book or *Sunna* or a *fatwa* of a Companion. He thought one could look into the position of the *Tabi'un* who might err or be right because their opinion did not have to be followed nor was its imitation part of scrupulousness. He lived in Kufa, which was essentially a Shi'ite milieu, and met the Shi'ite Imams in his time, like Zayd ibn 'Ali, Muhammad al-Baqir, Ja'far as-Sadiq and 'Abdullah ibn Hasan, and yet he maintained his high opinion of the great Companions in spite of his inclination to the noble family of the Prophet and his love for the People of the House.

Ibn 'Abdu'l-Barr states in *al-Intiqa'*: "Sa'id ibn Abi 'Aruba said, 'I came to Kufa and attended the gathering of Abu Hanifa. One day he mentioned 'Uthman ibn 'Affan and prayed for mercy on him. I told him, "You ask Allah to show him mercy. I have not heard anyone in this city pray for mercy on 'Uthman ibn 'Affan except you.'"

He was a profound thinker and went deeply into questions. He did not stop at the outward meaning of a text but went beyond that to its intentions. His deep philosophical intellect may have impelled him to that because at the beginning of his life he was involved in *kalam*. That profound sense of inquiry may be what led him to study *hadiths* in a deep manner, seeking the causes of the judgements they contained by examining the indications of words, aims of phrases, circumstances and related qualities. When he was satisfied about the underlying cause, he used analogy based on it and hypothesised and took that very far indeed.

He was quick-witted and ideas would come to him quickly the moment that they were needed. His thinking was not restricted or blocked when he investigated. He was never at a loss for words in debate as long as the truth was on his side and he had evidence to support it. He had ample devices to enable him to easily leave his opponent dumbfounded. There are many extraordinary examples of that in the books of biographies and histories which depict his life. We will mention some of them which reveal his excellent technique and subtle approach.

It is related that a man died and he had appointed Abu Hanifa, when he was absent, as his executor. The case was presented before Ibn Shibrama and Abu Hanifa mentioned that to him. Abu Hanifa brought the evidence that the man had died and made him executor. Ibn Shibrama said "Abu Hanifa, do you swear that your witnesses have testified truly?" He said, "I do not have to take an oath, I was absent." He said, "Your standards are in error." Abu Hanifa asked, "What do you say about a blind man with a head wound when two witnesses testify to that: does the blind man have to testify that the witnesses spoke the truth when he cannot see?" So Ibn Shibrama ordered the will to be implemented.

Ad-Dahhak ibn Qays al-Khariji, who rebelled in the Umayyad era, entered the mosque of Kufa and said to Abu Hanifa, "Repent." "Of what?" he asked. He answered, "Of your allowing arbitration." Abu Hanifa asked, "Will you kill me or debate with me?" "I will debate with you," he said. "And if we disagree on anything in the debate, who will decide between us?" He replied, "I will accept whomever you wish." Abu Hanifa said to one of ad-Dahhak's companions, "Sit and judge between us if we disagree." Then he turned and asked ad-Dahhak, "Are you content for this one to decide between us?" "Yes," he replied. Abu Hanifa said, "Then you have allowed arbitration, so desist."

It is related that there was a man in Kufa who stated, "'Uthman ibn 'Affan was a Jew," and the scholars could not quiet him or impel him to say other than what he had said. Abu Hanifa went to him and said, "I will bring you a suitor." "Who for?" asked the man. "For your daughter. It is a noble man who is wealthy, generous and who knows the Book of Allah by heart. He prays at night and weeps frequently out of fear of Allah." "One would be content with far less than this, Abu Hanifa?" "There is just one thing," said the Imam. "What is that?" asked the man. "He is a Jew," replied the Imam. The man exclaimed, "Glory be to Allah! Do you tell me to marry my daughter to a Jew!" "You will not do it?" asked the Imam. "No," replied the man. Abu Hanifa continued, "The Prophet, may Allah bless him and grant him peace, married his daughter to such a Jew," meaning 'Uthman, may Allah be pleased with him, whom the man claimed to be a Jew. He said, "I ask forgiveness of Allah. I repent to Allah Almighty."

These reports illustrate the extent of his skill in debate and the excellence of his dealing with some of the worst and most deleterious groups so that al-Mansur said to him, "You are the master of devices." It was easy for him to debate because of the strength of his insight, grasp of people's character, and his power to open the locks of their hearts and their inner selves. He would approach them from a direction which they could grasp and were familiar with so that it would be easy for them to accept the truth.

Abu Hanifa was sincere in the quest for the truth and that is the attribute of perfection which elevated him and illuminated his heart and insight into the truth. A sincere heart is the one which is free of bias, taint of the self and emotion in investigating matters and grasping problems. Allah gave him the light of recognition and lucid perception and his thoughts were directed in a straightforward manner in seeking out the truth so that it would be understood and grasped.

Abu Hanifa freed himself of every appetite except the desire for sound perception and he knew that such *fiqh* is the *deen* or true understanding of the *deen*. It cannot be sought by someone dominated by prejudice for that is a barrier in the way of the truth. The desire for the truth was the over-riding concern which motivated him. Due to his sincerity, he did not claim that his opinion was the truth, but said, "This is our opinion. It is the best we can determine. If anyone comes with a better position, he is more entitled to be correct than we are."

It was said to him, "Abu Hanifa, this *fatwa* which you give is the truth about which there can be no doubt." He said, "By Allah, I do not know. Perhaps it is falsehood about which there can be no doubt." Zafar said, "We used to go regularly to Abu Hanifa with Abu Yusuf and Muhammad ibn al-Hasan ash-Shaybani and write down what he said. One day he said to Abu Yusuf, "Woe to you, Ya'qub! Do not write down all that you hear from me. I may have an opinion today and then leave it tomorrow. I may have an opinion tomorrow and leave it the following day." His sincerity in seeking the truth might well lead him to retract his opinion if his opponent mentioned a *hadith* he had which was not impaired or mentioned a *fatwa* of a Companion.

Zuhayr ibn Mu'awiya said, "I asked Abu Hanifa about safe-conduct granted by a slave. He said, 'If he is not a fighter, his safe-conduct is invalid.' I said, "'Asim al-Ahwal transmitted that al-Fudayl ibn Yazid ar-

Raqashi said, “We were laying siege to the enemy when an arrow was shot to them with a safe conduct attached to it.” They said, “You have given us safe conduct.” We replied, “It was given by a slave.” They said, “By Allah, we do not know the slave from the free man among you.” So we wrote that to ‘Umar ibn al-Khattab and ‘Umar wrote back, “Allow the safe-conduct of the slave.” ’” Abu Hanifa was silent. Then he was absent from Kufa for ten years. When he returned, I went to him and asked him about the safe-conduct of the slave, and he replied giving ‘Asim’s account. He had retracted his original statement and so I knew that he followed what he had heard.” He was asked, “Do you diverge from the Prophet, may Allah bless him and grant him peace?” He replied, “May Allah curse the one who differs from the Messenger of Allah, may Allah bless him and grant him peace. Allah honoured us with him and we seek salvation by him.”

All these qualities were combined with another quality through which all of these qualities were made manifest which is a gift which Allah gives to some people. That quality was strength of personality, influence, the capacity to instil awe and affect others by charisma, charm and spiritual vigour. But in spite of this he did not impose his opinion on his many students. Sometimes used to discuss with them and ascertain the opinions of the important ones among them and debate with them as an equal, not as a superior. Sometimes used to conclude with an opinion and all would be silent to listen to him but some of them would keep their own opinions. In both cases, Abu Hanifa was consistent with his position and his personality.

Abu Hanifa’s circle of companions was described by his contemporary, Mis‘ar ibn Kidam, who said, “They used to separate to see to their needs after the morning prayer. They would then gather to him and sit with him. Some would ask and some would debate. These was a great deal of talking because of the amount of evidence that was offered.” (al-Makki, pt. 2, p. 36)

These are some of the attributes of Abu Hanifa: some are natural and some are acquired. They are the key to his personality and what enabled him to make use of all the spiritual nourishment he obtained. They are the tools which were used to process the material which he had contact with. It is through them that there occurred his interaction with the time in which he lived, his shaykhs and his experiences. These attributes were supported by a new method of thought and opinion which involved profound investigation and study and had far-reaching effects on individuals and indeed whole generations. It is by these qualities that Abu Hanifa won his supporters and provoked the spite of his envious detractors.

His Shaykhs

Abu Hanifa said of his scholarly training and his studies of *fiqh*, "I was in a lode of knowledge and *fiqh*. I sat with its people and devoted myself to one of their *fuqaha*.'"

His words clearly indicate that he lived and grew up in a scholarly environment and that he sat with scholars, studied with them, and learned their methods of investigation. Then he chose a *faqih* among them who satisfied his scholarly inclination and devoted himself to him alone. He did not shun other scholars but sometimes used to debate with them, his devotion to his own teacher not preventing him from sitting with them. All sources agree that he was the student of Hammad ibn Abi Sulayman, the shaykh of Iraqi *fiqh* in his time. But he also learned from others, related from many and debated with many, especially after Hammad's death. When he visited the *Haram* after leaving Kufa because of the Umayyad governor, Ibn Hubayra, he met many shaykhs.

Before dealing with those shaykhs, or at least those we know of, and their legal orientation in particular, we must point out three points:

• Abu Hanifa's shaykhs were from different persuasions and disparate sects. They were not all *fuqaha'* of the main *sunni* community and they were not only people of opinion. Some of them were *hadith* scholars and some taught the *fiqh* of the Qur'an and the knowledge of the great Qur'anic commentator, 'Abdullah ibn 'Abbas. When he stayed in Makka for about six years, which is understood from some of the books we have cited, he must have studied with the *Tabi'un* there who had learned the knowledge of Ibn 'Abbas from him or from his students.

Many of those he sat with in Iraq were from among the sects of the Shi'a with all their differences. They included the Kaysanites, the Zaydites, the Twelver Imams and the Isma'ilis. Each had an effect on his thought, even if he did not follow their leanings except in respect of his love for the House of the Prophet. He took in all those disparate elements and assimilated them to reach his final conclusion. Abu Hanifa utilised all these elements, taking the best from them, and then produced a new way of thinking and an upright opinion.

• Abu Hanifa moved away from these different studies and learned the *fatwas* of the Companions who were famous for *ijtihad*, excellent opinion and intelligence.

We read in the *History of Baghdad*: "One day Abu Hanifa went to al-Mansur when 'Isa ibn Musa was with him. He told al-Mansur, 'This is the foremost scholar of the world today.' He asked him, 'Nu'man, from whom did you take knowledge?' He replied, 'From the companions of 'Umar from 'Umar, from the companions of 'Ali from 'Ali, and from the companions of 'Abdullah (ibn Mas'ud) from 'Abdullah, and in the time of Ibn 'Abbas none had more knowledge than him.' He said, 'You have made sure of yourself.'"

Abu Hanifa learned the *fatwas* of those majestic Compan-ions and based himself on following their *fatwas*, or at least what he had from the *Tabi'un* from whom he learned, because he took it from their companions without intermediary.

• All the books of virtues mention that he met some Companions. Some of them state that he related *hadiths* from them. This would put him in the rank of the *Tabi'un*, and thus give him an excellence above the *fuqaha'* contemporary with him like Sufyan ath-Thawri, al-Awza'i, Malik and others.

Sources do not disagree that Abu Hanifa met some Companions who were contemporary with him and lived to the end of 100 AH or close to that or were alive in the 90s. They mention several Companions he met and saw, including Anas ibn Malik, (d. 93), 'Abdullah ibn Abi Awfa (d. 87), Wathila ibn al-Asqa' (d. 85), Abu't-Tufayl ibn Wathila, (d. in Makka in 102), the last Companion to die, and Sahl ibn Sa'id (d. 88).

There is disagreement about whether he transmitted from them or not. Some scholars said that he related from them and they mention *hadiths* which he reported, but knowledgeable *hadith* scholars consider their *isnad* to be weak.

Most scholars state that even if Abu Hanifa met some Companions, he did not relate from them. They argue that when he met them he was not at the age of someone who learns knowledge, retains it and transmits it because that could only have happened at the beginning of his life while he was going to the markets before he became involved with knowledge.

We incline to this view and accept that Abu Hanifa met some Companions, but did not relate from them. So was he a *Tabi‘i* or not? Scholars disagree about the definition of a *Tabi‘i.* Some say that it applies to anyone who met a Companion, even if he did not keep his company; simply having seen him is enough to make a man a *Tabi‘i* according to that view. By that criterion Abu Hanifa is a *Tabi‘i*. Some scholars, however, say that it is not enough to simply have seen the Companion but it is also necessary to have kept his company and learnt from him and so by that reckoning Abu Hanifa could not be said to be one of the *Tabi‘un*.

Whatever the case, scholars are unanimous about the fact that he met a number of the *Tabi‘un* and sat with them, studied with them, related from them and learned their *fiqh* at an age which allowed learning and transmission. Some of them were known for transmission, like ash-Sha‘bi, and many were famous for opinion. He took from ‘Ikrima, the transmitter of the knowledge of Ibn ‘Abbas, Nafi‘, the bearer of the knowledge of Ibn ‘Umar, and ‘Ata’ ibn Abi Rabah, the *faqih* of Makka, with whom he had a lengthy relationship. He used to debate with him about *tafsir* and learn from him.

We read in *al-Intiqa’*: “Abu Hanifa said, ‘I asked ‘Ata’ ibn Rabah, “What do you say about the words of Allah Almighty, *‘We restored his family to him, and the same again with them’* (21:84)?” He said, “He gave him his family and the like of his family.” I answered, “Is it permitted to attribute to a man what is not from him?” He asked, “What is your position?” I replied, “Abu Muhammad, it means the reward of his family and the like of their reward.” He said, “It is like that, but Allah knows best.”’” If this is true, it indicates two things. One is that Abu Hanifa sat with ‘Ata’ ibn Abi Rabah, studied with him and took from him. ‘Ata’ died in 114 AH and so he must have gone on *hajj* and studied with the Makkan scholars while he was Hammad’s student. The second is that ‘Ata’ used to teach *tafsir* of the Qur’an in Makka and that the school of Makka had inherited the Qur’anic knowledge of ‘Abdullah ibn ‘Abbas.

The shaykhs to whom he was connected, each of whom had a specific intellectual quality, deserve consideration, in order to ascertain the sum of the sources from which he took.

The most prominent of his shaykhs was Hammad ibn Sulayman. He was an Ash‘ari by clientage since he was a client of Ibrahim ibn Abi Musa al-Ash‘ari. He grew up in Kufa and learned his *fiqh* from Ibrahim an-Nakha‘i, the most knowledgeable of the proponents of opinion. He died in 120 AH. He not only studied with an-Nakha‘i but also studied *fiqh* with ash-Sha‘bi. Both of them took from Shurayh, ‘Alqama ibn Qays and Masruq ibn al-Adja‘. They, in turn, had learned the *fiqh* of the two Companions, ‘Abdullah ibn Mas‘ud and ‘Ali ibn Abi Talib.

The fact that these two Companions lived in Kufa meant that they left the people of Kufa much *fiqh*. That was the bedrock of Kufan *fiqh*. It is from their *fatwas* and those of their students who followed their path that this great legal inheritance was moulded. Hammad learned it, as said, from Ibrahim and ash-Sha‘bi but it is clear that the *fiqh* of Ibrahim dominated him. Ibrahim was a proponent of the *fiqh* of the people of opinion whereas ash-Sha‘bi was closer to the people of tradition even though he lived in Iraq.

As already mentioned, Abu Hanifa stayed with Hammad for eighteen years and learned the *fiqh* of the people of Iraq whose core was the *fiqh* of ‘Abdullah ibn Mas‘ud. He also learned the *fatwas* of Ibrahim an-Nakha‘i so that Shah Waliyullah ad-Dihlawi says, “The source of Hanafi *fiqh* is found in the statements of Ibrahim an-Nakha‘i.” This is what he says in *Hujjatu’llah al-Baligha*: “Abu Hanifa, may Allah be pleased with him, was the strongest in holding to the school of Ibrahim and his contemporaries and only exceeded it as much as Allah willed. A very important consideration when making deduction in his school was precise analysis of the manner of extrapolation. If you wish to learn the truth of what we have said, there is a summary of the positions of Ibrahim and his contemporaries in *The Book of Traditions*, the *Jami‘* of ‘Abdu’r-Razzaq and the *Musannaf* of Abu Bakr ibn Shayba. The analogy used in the school of Abu Hanifa does not deviate from this procedure except in a very few places and even in those few it does not leave what the *fuqaha’* of Kufa believed.” (p. 146)

When Hammad died, Abu Hanifa continued to study and research, teach and learn as do all true scholars, conforming with the tradition: “A scholar continues to seek knowledge. When he thinks that he knows, he is ignorant.” We mentioned his learning in Makka from ‘Ata’ ibn Abi Rabah the school of Ibn ‘Abbas which came through ‘Ikrima. He also took the knowledge of Ibn ‘Umar and the knowledge of ‘Umar from Nafi‘, the client of Ibn ‘Umar. Thus he amassed the knowledge of Ibn Mas‘ud and ‘Ali from the school of Kufa and the knowledge of ‘Umar and Ibn ‘Abbas from those *Tabi‘un* with whom he studied.

We can state, therefore, that he learned the *fiqh* of the whole Muslim community with all its various methods, even though the thinking of the people of opinion was stronger in him so that he is considered the shaykh of the people of opinion. Abu Hanifa, however, did not confine himself to those *fuqaha’*. He also went

to the Shi'ite Imams and studied with them and supported them. He met Zayd ibn 'Ali, Muhammad al-Baqir and 'Abdullah ibn al-Hasan, each of whom had a position in *fiqh* and knowledge.

Imam Zayd ibn 'Ali Zayn al-'Abidin died in 122 AH. He was a scholar with extensive learning in many areas of Islamic knowledge. He knew the Qur'anic readings and all the Qur'anic sciences. He knew *fiqh* and doctrine and what was said in them, to the extent that the Mu'tazilites considered him one of their shaykhs. It is reported that Abu Hanifa was his student for two years. According to *ar-Rawd an-Nadir,* Abu Hanifa said, "I saw Zayd ibn 'Ali as much as his family saw him. In his time, I did not see anyone with more *fiqh* or knowledge than him nor anyone swifter in reply or clearer in position. He was unique." He did not devote himself to him but he learned from him in some encounters.

Muhammad al-Baqir, the son of Zayn al-'Abidin, was the brother of Imam Zayd and died before him. He was one of the Shi'ite Imams on whom the Twelvers and Isma'ilis, the two most famous Shi'ite groups, agree. He was called "al-Baqir" (deep seeker of knowledge) because of the serious way he sought knowledge. Although he was one of the People of the House, he did not speak ill of the first three khalifs. It is said some of the people of Iraq spoke ill of Abu Bakr, 'Umar and 'Uthman in his presence and he became angry and said, "Are you are among the emigrants who were *'expelled from their homes and wealth'*?" (59:8) "No," they replied. He asked, "So then you must be among those *'settled in the abode and faith'*?" (59:9) "No," they replied. He said, "Nor are you among those who came after them saying, *'Our Lord, forgive us and our brothers who preceded us in belief.'* (59:10) Leave me. Allah is not near your abode. Affirm Islam. You are not among its people." He died in 114 AH.

It appears that Abu Hanifa met al-Baqir at the beginning of his development. He first met him in Madina when he was visiting it. It is reported that al-Baqir remarked to him, "Are you the one who changes the *deen* of my grandfather and his *hadiths* by analogy?" Abu Hanifa replied, "I seek refuge with Allah!" Muhammad said "You have changed it." Abu Hanifa said, "Sit in your place as is your right until I sit by my right. I respect you as your grandfather, may Allah bless him and grant him peace, was respected by his Companions when he was alive." He sat.

Then Abu Hanifa knelt before him and said, "I will present you with three things to answer. Who is weaker: a man or woman?" "A woman," he replied. Abu Hanifa then asked; "What is the share of a woman?" "A man has two shares and a woman one," he replied. Abu Hanifa said, "This is the statement of your grandfather. If I had changed the *deen* of your grandfather, by analogy a man would have one share and a woman two because the woman is weaker than the man."

Then he asked, "Which is better: the prayer or fasting?" "The prayer," al-Baqir replied. He said, "This is the statement of your grandfather. If I had changed the *deen* of your grandfather, my analogy would be that, because the prayer is better, when a woman is free of menstruation she should be commanded to make up the prayer and not make up the fast."

Then he asked, "Which is more impure: urine or sperm?" "Urine is more impure," he replied. He said, "If I had changed the *deen* of your grandfather by analogy, I would have ordered a *ghusl* for urine and *wudu'* for sperm. I seek refuge with Allah from changing the *deen* of your grandfather by analogy." Muhammad rose and embraced him and kissed his face to honour him.

Al-Makki mentions this conversation and indicates that it must have been their first encounter because al-Baqir asked a question of someone who was famous for analogy. Then Abu Hanifa showed him that he did not replace the text by analogy and he clarified his method to him. It also shows that Abu Hanifa was already known for opinion (*ra'y*) and debate regarding analogy.

As Abu Hanifa was connected to al-Baqir, he was also connected to his son, Ja'far as-Sadiq, who was the same age as Abu Hanifa. They were born in the same year, but Ja'far died about two years before Abu Hanifa, in 148 AH. Abu Hanifa said, "By Allah, I have not seen anyone with more *fiqh* than Ja'far ibn Muhammad."

We read in al-Makki, "Abu Ja'far al-Mansur said, 'Abu Hanifa, people are tempted by Ja'far ibn Muhammad, so prepare some difficult questions for him.' He prepared forty questions. Abu Hanifa said about his visit to al-Mansur in Hira, 'I went to him and entered. Ja'far was sitting on his right. When I saw him, I felt great esteem for Ja'far as-Sadiq which I did not feel for al-Mansur. I greeted him and he indicated I should sit. Then al-Mansur turned to Ja'far and asked, 'Abu 'Abdullah, this is Abu Hanifa?' 'Yes,' he replied. Then he turned to me and ordered, 'Abu Hanifa, present your problems to Abu 'Abdullah.' I began to present them and he answered them, saying, 'You say this; the people of Madina say this; and we say this. Sometimes it is the position of our Follower, sometimes that of their Follower, and sometimes we differ.' He dealt with all forty questions. Then Abu Hanifa stated, 'The most knowledgeable of people is the one with the most

knowledge of people's differences.'" Scholars count Ja'far as one of Abu Hanifa's shaykhs, even though they were the same age.

Abu Hanifa was also, according to various sources, a student of 'Abdullah ibn al-Hasan ibn al-Hasan. He was a reliable and truthful *hadith* transmitter. Sufyan ath-Thawri, Malik and others related from him. He was respected by people and performed a lot of worship. He visited 'Umar ibn 'Abdu'l-'Aziz who honoured him. He also went to as-Saffah at the beginning of the Abbasid period and he showed him honour and gave him a thousand dirhams. When al-Mansur came to power, he treated him in the opposite fashion and also dealt harshly with his sons and family. They were brought in chains from Madina to al-Hashimiyya and put in prison where most of them died. 'Abdullah himself died in 145 AH at the age of about 75. He was ten years older than Abu Hanifa.

Abu Hanifa's scholarly links were not confined to the men of the Community and Imams of the People of the House. Biographies also state that he studied with some of the people of different sects and it is said that one of his shaykhs was Jabir ibn Yazid al-Ju'fi. He was an extreme Shi'ite who believed that the Prophet would return as would 'Ali and the Shi'ite Imams. Ibn al-Bazzazi said that his father Yazid was one of the followers of 'Abdullah ibn Saba' but that is unlikely. It is more likely that he was a Shi'ite but not a Saba'ite because the Saba'ites claimed that 'Ali was a god or close to a god and 'Ali disavowed them. Abu Hanifa would not take the knowledge of Islam from an unbeliever. His claim that 'Ali would return agrees with the Saba'ites, but also with the Kaysanites, and it is more likely that he was one of them.

It appears that Abu Hanifa studied some intellectual matters with him, although he believed that his creed was deviant and that he was following a sect. He used to say about him, "Jabir al-Ju'fi is corrupted by the erroneous view which he espoused. But in his subject I found no one greater than him in Kufa." He did not specify what area of knowledge Jabir was expert in: it may have been deduction or logical matters.

He used to discuss with him, but he forbade his companions to sit with him. It seems that he feared that Jabir's intellect might seduce them and lead to them into deviation and following his false views and beliefs. He stated that he was a liar. We read in *Mizan al-I'tidal*, "Abu Yahya al-Hammani claimed to have heard Abu Hanifa remark, "Among those I have seen, I have not seen any better than 'Ata' nor a greater liar than Jabir al-Ju'fi.""

There were two types of scholars in his time: those who confined themselves only to the *fiqh* of Islam and did not deal with anything else, even if they had more understanding of extrapolation and opinion, and those who studied creeds and philosophy which involved them in sciences outside the *deen* and sometimes led them to deviate from its aims and meanings. None of them combined profound exact legal studies and philosophical studies and proceeded in a manner neither excessive nor aberrant except Abu Hanifa. He was the only one to follow this middle path. He achieved a high level in all areas by the force of his sound intellect, firm *deen* and inquiring soul. He feared that his students would not be up to that and so he forbade them to deal with anything other than *fiqh*.

His private studies and experiences

A person's private life, circumstances and affairs, and his undirected studies in which he does not rely on a teacher, and other experiences have an effect on his knowledge and direction and the honing of his intellect or its weakness. This was, of course, also the case with Abu Hanifa.

As we said, he was from a wealthy merchant family and continued to be involved in commerce throughout his life. Therefore he knew first-hand about market transactions and commercial customs. His market experience enabled him to discuss commercial transactions, rules of behaviour and the judgements pertaining to them with familiarity and understanding. Thus custom had a place in his legal deduction when there was no elucidating example from the Book or *Sunna,* as we will explain, Allah willing.

It may be these experiences which made him prefer deduction through *istihsan,* when analogy resulted in something contrary to benefit, natural justice or custom. His student, ash-Shaybani, said, "Abu Hanifa debated with his companions about analogies and they appealed and argued with him until he said, 'I have used *istihsan*.' whereupon none of them said anything because of the great amount of *istihsan* he used in solving problems. They all submitted to it."

Abu Hanifa travelled a lot and went on *hajj* many times. His *hajj* did not keep him from studying, discussing, transmitting and giving *fatwa*. In Makka when he first met 'Ata' ibn Abi Rabah, 'Ata' asked him,

"Who are you?" "One of the people of Kufa," he replied. He said, "From the people of a city who have divided their *deen* into parties?" "Yes," he replied. 'Ata' inquired, "From which are you?" He replied, "From those who do not curse the *Salaf* or hold Qadarite views and do not consider a person an unbeliever on account of a wrong action." 'Ata' said, "You are correct, so stay." He also went to Malik and discussed *fiqh* with him, and he met al-Awza'i and had discussions with him. That is how he acted when he travelled. He would present his *fatwas* and listen to criticism of them and analyse them to see where they were weak.

He was an observant man and, from the time of his youth, was fond of debate and argument in the quest of knowledge. He used to go to Basra, the home of Islamic sects, and debate with their leaders and argue with them about their views. It is reported that he debated with twenty-two sects, arguing in defence of Islam. It is related that once he debated with the Dahrites [materialist atheists] and in order to call their attention to the necessity of a Creator of the universe, he asked them, "What do you say about someone who tells you, 'I saw a laden ship full of goods and cargo which it bore across the deep seas through crashing waves and veering winds, travelling straight through them without any sailor to direct and guide it or helmsman to move it'? Would that be logically possible?" "No," they said, "this is not logically possible and cannot be imagined." Abu Hanifa said, "Glory be to Allah! If the existence of a ship on an even keel without a mariner or helmsman is not conceivable, how can it be possible for this world with all its different circumstances, changing matters and actions, and vast expanse to be without a Maker, Preserver and Originator?"

His arguments on dogma refined his thought and honed his perception. His thought was further refined by the debates he had about *fiqh* in every place he travelled – Makka, Madina and all the areas of the Hijaz where there were debates about *fiqh.* He learned *hadiths* which he did not know before, aspects of analogy which perhaps he had not thought of, and the *fatwas* of the Companions.

Abu Hanifa's method in teaching was like that of his studying; it was not simply giving lessons to students. So a question would be presented and he would give it to his students and argue with them about its ruling. Each would give his opinions and mention the analogies relevant to it, as Muhammad ash-Shaybani reports, and dispute his *ijtihad*. They might shout at one another until there was a veritable uproar, as was mentioned by Mis'ar ibn Kidam. After they had examined the matter from all sides, he would indicate the opinion arrived at by this study and its distillation and all would affirm it and be pleased with it. Studying in this fashion instructs both the teacher and student. Its benefit for the teacher does not lessen its benefit for the student. Abu Hanifa continued to teach like this which made him a seeker of knowledge until he died. His knowledge was continually growing and his thinking ever moving.

When a *hadith* was presented to him, he would point out the chief judgements which it contained and elucidate them. Then he would ramify the questions which concurred with the principles involved. That is what he considered *fiqh* to be. He said, "The like of the one who seeks *hadith* and does not learn *fiqh* is like the apothecary who has the tools but does not know what medicine to prepare. So the seeker of *hadith* does not know the value of his *hadith* until the *faqih* comes."

To summarise, he debated with his students and cared for them in three separate ways. Firstly, he supported them with his wealth, helping them in their difficulties such as when someone needed to marry but did not have the necessary funds. He would send money to each student according to his need. Sharik said about him, "He was wealthy as well as having knowledge and spent his wealth on himself and his dependants. When he taught, he stated, 'I have achieved the greatest wealth by knowing the lawful and unlawful.'"

Secondly, he paid attention to his students and carefully observed them. When he found an aptitude for knowledge mixed with delusion in one of them, he removed the delusion from him by tests which showed him that he was still in need of more knowledge which others had.

It is related that Abu Yusuf, his student and companion, felt that he should have his own place to teach. Abu Hanifa told one of those with him, "Go to the assembly of Ya'qub (Abu Yusuf) and ask him, 'What do you do about the case of a man who gives a fuller a garment to bleach for two dirhams and then asks for his garment back and the fuller says he has no knowledge of it? Then he returns again and asks for it and is given it bleached. Is the fuller paid?' If he says he is, tell him, he is wrong. If he says he is not, tell him he is wrong." The man went to him and asked him and he said, "Yes, he has a wage." He said, "You are wrong." He waited a time and then said "No, he does not." He said, "You are wrong." He went immediately to Abu Hanifa and said, "The question of the fuller must have come from you, so tell me about it." He replied, "If the bleaching took place after the misappropriation, he has no wage because he did it for himself. If it was before that he has the wage because he bleached it for its owner."

Thirdly, he always had good words for his students, especially for those of them who were about to leave or embark on something important. He used to say to them, “You are the joy of my heart and the removal of my sorrow.”

Chapter Three
The Age of Abu Hanifa

Abu Hanifa was born in 80 AH when ‘Abdu’l-Malik ibn Marwan was khalif. He lived until 150, thus, as we said, experienced both the strength and weakness of the Umayyads and the rise and consolidation of the Abbasids. He lived longer under the rule of the Umayyads than the Abbasids, passing fifty-two years of his life under Umayyad rule, which was the time of his education and when he reached the peak of his knowledge and full intellectual maturity. He only lived through twelve years of Abbasid rule. At such a mature age, this would not involve a reversal of his intellectual methods and customs. At that point, his output was great and input only a little. We cannot say that he absorbed nothing because the human intellect is always seeking knowledge and is constantly learning and scholars are always seeking increase in knowledge.

In fact, the difference between the end of the Umayyad era and the beginning of the Abbasid era was not great in respect of scholarly spirit, especially on the religious side, because the Abbasid period grew out of what existed under the Umayyads. In the fields of scholarship and social development, one was the result of the other, like a continuous river in which various waters clash, differing slightly in taste and colour but deviating little from the main flow. The scholarly and social spirit which dominated the Umayyads came from the larger community, not from the government.

As well as the legacy of the knowledge of the Companions, there was also the legacy of the civilisations and sciences of the conquered nations. They amplified the Arabic tradition with some of the inherited knowledge of those nations which was translated from Persian and other languages. The process of translation began in the Umayyad era. It is enough to remark that the author of *Kalila wa Dimna*, and other writers lived most of their lives in the Umayyad era. We find religious knowledge growing in Abbasid times and translation spreading and being supported. That was a natural and continuing development.

We will begin our survey with the political scene. The first phenomenon can be found in the rise of the Umayyad state which was established after the governance of the first four khalifs. Until then, the khalif had been chosen from amongst prominent Qurayshi Muslims, either upon the indication of the preceding khalif, as happened with ‘Umar, or without such indication, as was the case with Abu Bakr and ‘Ali, or by consultation, as was the case with ‘Uthman. When the Umayyads were established, the khalifate became an hereditary monarchy.

Its founder of the dynasty enjoined the support of a large group of Muslims whereas the rest of the Umayyads assumed the title through inheritance, maintaining that they alone had the right to it without the rest of the Muslims having any choice in the matter. This opinion led to disturbances and rebellions throughout the Umayyad period. Even at times when people were outwardly quiescent, their hearts were still seething with resentment.

The Ansar rebelled against Yazid I, and Madina was plundered by an army which devastated it and did not observe its sanctity. Al-Husayn ibn ‘Ali refused to give allegiance, cosidering that to do so was contrary to the principles of Islamic law, and he rebelled against the Umayyad ruler. He was slain by Yazid’s men, and his sisters, the daughters of Fatima, were taken as captives to Yazid. Zayd ibn ‘Ali was killed as was his son Yahya. ‘Abdullah ibn Yahya was also killed. That did not engender love for the Umayyads in people’s hearts.

The Umayyads had a strong Arab bias. They revived a lot of the pre-Islamic Arab tradition, some of which was praiseworthy in itself, but they were excessive in doing it to the point that it became outright racism and prejudice against non-Arabs and sanctioned violation of their rights, even though, in the *Shari‘a,* all Muslims are equal and Arab has no superiority over non-Arab. Muslim lands suffered waves of unrest and waves of evil because of what happened. Even when things were outwardly calm, the fire still simmered there under the surface and movements continued to operate covertly.

Abu Hanifa witnessed the harshest aspects of Umayyad rule which were epitomised by the governorship of al-Hajjaj ibn Yusuf ath-Thaqafi, who died when Abu Hanifa was about fifteen, an age at which people are capable of discernment and understanding. So he had first-hand experience of the harshest manifestation of Umayyad rule and that must have had an effect on him as a young man and coloured his appraisal of the

government. His discontent could only have increased when he saw the oppression, imprisonment and torture to which the family of the Prophet was subjected.

When the Abbasid state was established, Abu Hanifa hoped that it would be more merciful because of their kinship to the family of ‘Ali and because it came to power after much severity and tribulation. Therefore he offered his allegiance to as-Saffah willingly and was the spokesman for the *fuqaha'* as we have mentioned. When, however, al-Mansur came to power and began to consolidate the state with force and ruthless determination, not gentleness and clemency, and he began to persecute the family of the Prophet, throwing their old men into the dungeons and shedding the blood of the ‘Alawites without the pretext of war, he saw the rule of al-Mansur as an extension of the oppression experienced under the Umayyads, even though the names had changed.

Abu Hanifa was born in Iraq, and there he grew up, lived and studied. At the end of the Umayyad and beginning of the Abbasid periods, the cities of Iraq were teeming with different races: Persians, Greeks, Indians and Arabs. Such a society is full of social upheaval since the various elements interact and each incident demands a ruling in the *Shari‘a*. Thus the milieu provided many issues which expanded the mind of the *faqih* in the extrapolation of questions, theory, conception and analogy. In addition to this mixed social environment, Iraq had another intellectual characteristic: it was the home of many different religions and sects. It contained the moderate and extreme Shi‘ites, the Mu‘tazilites, the Jahmites, the Qadariya, the Murji'ites and others.

From ancient times, Iraq had been the locus of conflicting intellectual trends. Ibn Abi'l-Hadid said in his commentary on the *Nahj al-Balagha* when discussing why the extreme Shi‘ite sects appeared in Iraq: “Part of what produced such sects (the Rafidites) after the time of the Messenger of Allah was that they were from Iraq and lived in Kufa. Iraq continued to produce schismatics and people with extraordinary religions and schools É They existed in the time of Khusrau in the form of those founded by Mani, Daysan, Mazdak and others. The Hijaz was not like this and the minds of the people of the Hijaz were not like their minds.”

Added to that intellectual diversity, there was another intellectual movement which began under the Umayyads and continued and bore fruit under the Abbasids: the movement connected to Greek philosophy. Ibn Khallikan said, “Khalid ibn Yazid ibn Mu‘awiya was one of the most knowledgeable men of Quraysh in the sciences and discussed chemistry and medicine and knew these two sciences well. He had treatises which indicate his knowledge and skill. He learned the craft from a monk called Maryanus the Greek and wrote three treatises on it.”

This connection grew with the increase in translation of Greek, Persian and Hindi manuscripts in the Abbasid era. All of this had an effect on Islamic thought and the effect varied according to the strength of intellect and religion of the one who learned this philosophy. Some people had proper thoughts and true faith and so they controlled these ideas and benefited from them in their thinking and perceptions and intellectual discipline. Others were not strong enough for it and so their minds became confused by it and hence they deviated intellectually.

As well as that, there were *zindiqs* who openly espoused distorted views designed to corrupt the Muslim Community and destroy Islam and undermine its people. Some of them wanted to oust Muslim rule and revive ancient Persian rule as is seen in the case of al-Muqanna‘ who rebelled against the Abbasids in the reign of al-Mahdi.

This intellectual upheaval took place in the religious sciences as well. It was also the period when scholars began to rely more heavily on recording their knowledge in writing so that individual areas of knowledge within the *deen* and Arabic began to take on a distinct form and scholars began to specialise in particular fields. The Shi‘ite *fuqaha'* also recorded their views and, by the time of Abu Hanifa, the Shi‘ites and Zaydites had known views.

It was also a time of argumentation and debate. The debates between the various groups tended to become very heated and boisterous. Scholars also travelled to take part in these debates, as we see when Abu Hanifa travelled to Basra to debate with the sects there. The people of Basra also travelled to Kufa for the same purpose. The debates which took place in the Hijaz during the *hajj* enabled scholars to meet and exchange views.

Debates also involved a sort of partisanship for one's own land. The people of Basra fanatically supported their scholars and the people of Kufa supported theirs with equal fervour. This may be a contributory factor for the intensity of argument between the people of the Hijaz and the people of Iraq. The disagreement between scholars was intense and their criticism of one another sharp at times. Even with the *Tabi‘un*, when their methods differed, their criticism of each other could sometimes become bitter. There was also great

disagreement regarding complicated problems which led to each person impugning his opponent's integrity. Abu Hanifa had a deep grasp of the spirit of his time and the reasoning of its scholars and he understood the direction of their thinking while maintaining his own individual thought.

One of the issues that the *fuqaha'* of the time debated and over which they had disputes about methodology was the *fatwas* of the Companions and *Tabi'un*. We will briefly mention the religious and political sects because Abu Hanifa had to deal with them throughout the course of his life.

The *Sunna* and Opinion

From the death of the Prophet, may Allah bless him and grant him peace, until the time of ash-Shafi'i there were basically two groups of *fuqaha',* one of which was famous for opinion and the other for transmission. Among the Companions some were famous for opinion and some for *hadith* and transmission. Such was the case with the *Tabi'un* and the generation after them and then the *mujtahid* Imams: Abu Hanifa, Malik and the *fuqaha'* of the various cities. Some were famous for opinion and some for *hadith*. We will now briefly explain this.

Ash-Shahrastani said in *al-Milal wa'n-Nihal*, "The situations which arise out of acts of worship and daily life are endless and we know absolutely that there is not a text for every situation, nor is that conceivable. Because the texts are limited and situations are not, ijtihad and analogy must be considered in order that every situation may be brought within the compass of the *Shari'a*. After the death of the Prophet, may Allah bless him and grant him peace, the Companions were faced with innumerable new situations. They had the Book of Allah Almighty and the *Sunna* of the Messenger of Allah.

"So in regard to the events which befell them they had recourse to the Book, and, if they found a clear ruling, they carried it out. If there was no judgement in the Book, they resorted to the *Sunna* of the Messenger of Allah, and consulted the memories of his Companions to ascertain the ruling of the Prophet in similar cases. If there was no one who knew anything they exercised *ijtihad* in their opinions. So they proceeded to examine the case in the light of the Book, then the *Sunna*, and then opinion. 'Umar stated in a letter to Abu Musa al-Ash'ari: 'Understanding is something which reverberates in your breast which is not in the Book or *Sunna*. Learn similarities and likenesses, and form analogies on that basis.'

"The Companions used opinion but disagreed as to how much it should be used. Some used it more often than others and some hesitated if there were no text from the Book or a followed *sunna*.

"They were in agreeement about relying on the Book and a known *sunna* if one existed but if they did not find a known *sunna,* the famous *fuqaha'* used opinion. If any of them were unsure about their recollection of a *hadith* of the Messenger of Allah or of his *fatwa* about a matter, they preferred not to relate it but to give a decision by opinion, fearing that relating it might involve lies against the Messenger of Allah. It is reported that 'Imran ibn Husayn used to say, 'By Allah, I think that if I had wished, I could have related from the Messenger of Allah for two consecutive days; but I was deterred from doing so by men of the Companions of the Messenger of Allah who had heard what I heard and had seen what I saw, and who relate *hadiths* which are not exactly as they tell them. I fear that I might be confused like them.'"

Abu 'Umar ash-Shaybani said, "I sat with Ibn Mas'ud and a year would go by without him saying, 'The Messenger of Allah said.' When he did say, 'The Messenger of Allah, may Allah bless him and grant him peace, said,' he trembled and said, 'like that, or close to it.'" 'Abdullah ibn Mas'ud thus preferred to give a decision according to his own opinion and to bear the responsibility for it if he was wrong, rather than possibly lie about something the Messenger of Allah said or did. He said, after deciding a problem according to his opinion, "I say this from my own opinion. If it is right, it is from Allah. If it is wrong, it is from me and from Shaytan." He used to be elated when his opinion accorded with a *hadith* which one of the Companions transmitted. A second group criticised those who gave *fatwa* based on their opinion, saying that they gave *fatwa* in the *Deen* of Allah without authority from the Book or the *Sunna*.

The truth is that the Companions found themselves in an impossible quandary resulting from the strength of their religious feelings. On the one hand, they might memorise a lot of *hadiths* from the Messenger of Allah in order to learn the judgements from them, but then they feared that they might be inaccurate about what he said. As we read in *Hujjatullah al-Baligha* by Shah Waliyullah ad-Dihlawi: "When 'Umar sent a group to Kufa, he told them: 'You are going to a people who are confused about the Qur'an, so they will ask you about *hadith*. Do not give them too many.'" On the other hand, they could give *fatwa* by their own opinions and be

in danger of making things lawful and unlawful without proper justification. Some of them preferred *hadiths* from the Messenger of Allah and some of them chose opinion when there was no clear precedent. If they subsequently learned of a clear *sunna*, they retracted their opinion. That was related of many of the Companions, including ‘Umar.

After the Companions came their students, the *Tabi‘un*, and two problems arose in their time. One was that the Muslims divided into parties and groups. The level of disagreement became intense and impassioned. They were severe with one another and started to accuse one another of disbelief, iniquity and rebellion, and to threaten one another and to unsheathe the sword. The Community divided into the Kharijites, Shi‘ites, Umayyads and those who were quiescent in the face of the afflictions which occurred and remained far from sedition, refusing to become involved in it.

The Kharijites formed different sects: the Azraqites, Ibadites, Najdites and others. The Shi‘a formed into disparate groups, some of whom had bizarre opinions which took them outside of Islam, even though they pretended to follow Islam in order to corrupt people. They were not concerned with establishing the *Deen*, but rather with destroying its basis to restore their old religion and its power and authority – or at least to shatter Muslim cohesion or to make the Muslims live with intense seditions, and to extinguish the Light of Allah.

The second problem was that Madina lost the unique authority which it enjoyed in the time of the Companions, especially in the time of ‘Umar which is considered the Golden Age of legal *ijtihad*. It was the home of the scholars and *fuqaha’* of the Com-panions. They did not leave it without maintaining a scholarly connection with it. They corresponded regarding problems which arose, because the *sunna* of ‘Umar was to ensure that the Com-panions of Quraysh were kept within the confines of the Hijaz. The great *Muhajirun* and *Ansar* never left the boundaries of Madina without his permission and he watched over them.

When ‘Umar died, they left for outlying regions. Each group of them became the source of a legal school which was connected to them and which the people of the places to which they emigrated followed. In the time of the *Tabi‘un,* there were students of those *fuqaha’* who lived in Madina or other places. Each city had its *fuqaha’* and their views grew apart as the cities were far apart, each adapting to the customs of his region and having to deal with the particular problems which troubled it. So people followed the path of those Companions who were in that region and transmitted the *hadiths* which they reported and which therefore became current among them. In this way various methods of legal thought appeared in different places, all derived from the Qur’an and the *Sunna* of the Prophet.

As we have seen, in the time of the Companions there were basically two schools. In one of them, opinion dominated and transmission played a lesser role, though, if a clear *sunna* emerged, opinion would be abandoned in favour of it. The other relied almost totally on transmission and preferred not to give a *fatwa* when there was no transmission, rather than risk contravening the *Deen* of Allah by opinion. In the time of the *Tabi‘un*, the gap between the two widened and those who preferred transmission increased their adherence to this path, considering it to be a protection from the seditions which had now become severe. They found safety only in holding to the *Sunna*.

The others normally had much less recourse to the *Sunna*, which had in any case become subject to falsification in outlying areas, and because of the new situations that arose and required rulings, they tended to rely far more on opinion. In addition, new ideas assailed them through contact with new cultures in lands conquered by Islam and many of the *Tabi‘un* were non-Arabs, heirs to the ancient civilisations of their ancestors.

So the gap widened between the schools and they grew further apart than they had been before when it had been difficult to distinguish between them. The basis of the disagreement was not about whether the authority of the *Sunna* should be accepted or not. It lay in two matters: the extent of the use of opinion, and secondary questions deduced through its use. The adherents of tradition only used opinion when absolutely necessary, rather in the way that a Muslim may eat pork if no other possibility exists.

They did not look into secondary questions or extrapolate judgements for speculative situations which had not arisen. They only gave *fatwas* for problems which had actually occurred and did not look into hypothetical situations, whereas the people of opinion gave many *fatwas* based on opinion whenever they had no sound *hadith* on the subject. They did not confine themselves in their studies to the deduction of rulings on actual problems but also posed hypothetical questions and gave judgement on them on the basis of their opinions.

Most of the adherents of *hadith* were in the Hijaz, even though there was some *fiqh* of opinion there. This was because it was the home of the first Companions and the place of Revelation and because many of the *Tabi‘un* who resided there were trained by the Companions who made little use of opinion – although a few were students of a Companion who used opinion a lot and transmitted his opinions.

Most of the adherents of opinion were in Iraq because they trained with ‘Abdullah ibn Mas‘ud, who refrained from transmitting from the Prophet out of fear of making a mistake but did not refrain from exercising his opinion. If there was a sound *hadith* on the subject, he referred to the *hadith*. There were also old philosophies and sciences in Iraq as well as the classical texts of Greece and Rome. Those who were influenced by this were comfortable with *ijtihad* by opinion, especially when there were not many *hadiths* among them to be consulted.

This process continued and in the time of the *Tabi‘i’t-Tabi‘in* and the *mujtahids* with *madhhabs*, the gap became very wide indeed and disagreements became intense. When the two groups met, each borrowed from the other. The people of *hadith* abandoned their former hesitation and were compelled to use opinion in some cases; and when the people of opinion saw the *Sunna* and traditions, some wrote them down and began to examine them, supporting their opinions with *hadiths* or leaving opinion aside if they had a sound *hadith* which they had not known about previously. This was the period in which *fiqh* developed.

Lies about the Prophet proliferated in this period because various groups defended their positions unscrupulously with words which led to the spread of forged *hadiths* which they espoused and which then spread among the Muslims. This upsurge in lies led to two things. *Hadith* scholars started to devote themselves to the investigation of truthful transmission and to the method of distinguishing the true from the false. To this end they studied the transmitters of *hadiths*, investigated their circumstances, learned those who were truthful and ranked them according to their truthfulness.

They then studied the *hadiths* and compared them with unquestioned elements of the *Deen*. Eventually, some scholars began to record the sound *hadiths*. Among them were Malik with his *Muwatta’*, *al-Jawami‘* of Sufyan ibn ‘Uyayna, and *al-Jami‘ al-Kabir* of Sufyan ath-Thawri. The second consequence was that people gave *fatwa* more and more frequently according to opinion, out of fear of lying against the Prophet or depending on something that might well have been forged. This occurred mostly in Iraq because the *fuqaha’* there who transmitted from the *Tabi‘un* and the next generation were known for opinion and often gave *fatwa* by it.

Shah Waliyullah ad-Dihlawi says in his book, after discussing the adherents of *hadith*:

> “Over and against them, in the time of Malik and Sufyan and after them, were people who did not dislike questions and were not afraid to give *fatwa*, saying that *fiqh* must be spread on the basis of the *Deen* but fearing to transmit the *hadiths* of the Prophet and attribute them to him wrongly. Ash-Sha‘bi said, ‘We prefer anyone to the Prophet (as authority for *fiqh*).’ Ibrahim said, ‘I prefer to say “‘Abdullah said” and “ ‘Alqama said”.’
>
> “They did not have the *hadiths* and traditions to deduce the *fiqh* on the principles which the people of *hadith* chose, nor were they inspired to look into the words of the scholars of other lands, collect them and investigate them. They believed that their Imams had the highest level of precision and their hearts were the closest to the Companions.
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> “‘Alqama said, ‘Is there anyone more solid than ‘Abdullah ibn Mas‘ud?’ Abu Hanifa said, ‘Ibrahim has more *fiqh* than Salim. If it had not been for the virtue of being a Companion, I would have said that ‘Alqama had more *fiqh* than Ibn ‘Umar.’ They possessed intelligence and intuition, and their minds swiftly moved from one thing to another, enabling them to derive the answer to problems from statements of the Companions.
>
> “Everyone is given ease in that for which he was created and *‘every party rejoices in what it has’*. So they formulated *fiqh* on the rule of extrapolation. The people of Iraq gave *fatwa* because they felt that it was their duty and the basis of the *Deen*; but at the same time they were afraid to report from the Messenger of Allah. They did not accept the statements of the people of other lands, and were partisan towards their shaykhs.”

Whatever the reasons, the Iraqis made much use of opinion but the Hijazis and Syrians used it less. As we indicated before, the adherents of opinion and those of *hadith* agreed that judgement must be by the Book and sound *Sunna* but they differed after that. The people of *hadith* were afraid of opinion but not of transmission from the Messenger, and did not adopt opinion except when forced to do so by the fact that they did not know of any *hadith*, whereas the people of opinion were afraid of relating *hadith* but not of giving *fatwa* on questions which they could later retract if they later came across a *hadith*. The people of opinion also refused to accept weak *hadiths*, whereas some of the people of *hadith* accepted them. Imam Malik, the Imam of the

people of Madina, used *munqati‘*, *mursal* and *mawquf hadiths*, and the transmitted practice of the people of Madina before resorting to analogy.

By the end of Abu Hanifa’s life, the schools began to come closer together again because they influenced one another in their discussions and debates. Their motive was the same: to elevate the *Shari‘a.* To this end, the one group had to study the knowledge of the other. Certainly, Abu Yusuf, one of the companions of Abu Hanifa and the *fuqaha’* of opinion, accepted the study and memorisation of *hadiths* and their use as evidence. If he found that an opinion he had previously held was contrary to the *Sunna*, he abandoned it for an opinion which agreed with the *hadith*.

We have briefly explained the difference between the *fuqaha’* of opinion and those of the *Sunna*. But was the ‘opinion’ in question merely legal analogy – which is to relate a matter on which there is no specific ruling to another prescribed matter with a ruling since the same legal reasoning applies to both – or was it more general than that? Anyone who studies the meaning of the word ‘opinion’ (*ra’y*) in the way it was used during the time of the Companions and the *Tabi‘un* will find that it is general and did not refer to analogy alone. It included analogy and much more besides. When we deal with the formation of the schools, we also find this general use of the term. When we focus on the time of the schools, we find that each school differs in the explanation of the type of opinion which it is permitted to adopt.

Ibn al-Qayyim explains that the opinion which was transmitted from the Companions and *Tabi‘un* was what the heart felt was correct after reflection, consideration, and seeking to identify what was correct when there were conflicting indications. The *fatwas* of the Companions and *Tabi‘un* and those who followed their path show that the idea of ‘opinion’ includes everything about which a *faqih* gives a *fatwa* for which there is no text, relying in his *fatwa* on what he knows of the *deen* in a general way, what agrees with its rulings in general, or what resembles another matter for which there is a text when he connects like to like. The word ‘opinion’ in that context includes analogy, *istihsan*, *masalih mursala* and custom.

Abu Hanifa and his adherents used analogy, *istihsan*, and custom, and Malik used *istihsan*, *masalih mursala* (considerations of welfare) and custom. He was famous for the use of considerations of welfare. That is why there was flexibility and receptivity for all the affairs of people in different times although it was a school in which analogy was not frequent. Malik said that *istihsan* was nine-tenths of knowledge but that was only when there was no text or *fatwa* from a Companion and no precedent practice of the people of Madina.

Ash-Shafi‘i came and founded a systematic method of legal reasoning which ensured that there could be reliable judgements in the event that no appropriate text was available and did not accept the previous latitude in the derivation of judgements. He thought that opinion should only be exercised in the *Shari‘a* on the basis of strict analogy, only permitting a matter without a text to be connected to the ruling on another matter for which a suitable text existed. In such cases, opinion had to be traced back to a text so that there was no possibility of innovation in the *Shari‘a*. As for general deduction and justification for judgements without a basis in a text, he considered that to be innovation in the *Shari‘a*.

That is why ash-Shafi‘i said, “Anyone who uses *istihsan* has legislated for himself.” He set out rules and criteria for analogy and defended and supported it so precisely that he, in fact, went further than the Hanafis in its formulation and affirmation. Ar-Razi commented, “The extraordinary thing is that Abu Hanifa is accused of relying on analogy, and his opponents used to criticise him for over-reliance on it, when it is not transmitted from him or any of his companions that he wrote at all affirming the principle of analogy or that he responded to the proofs of his opponents in denying analogy. The first to speak on this question and report proofs in it was Imam ash-Shafi‘i.”

The *fatwas* of the Companions and *Tabi‘un* and the practice of the people of Madina

Both the people of *hadith* and the people of opinion were inclined to accept the *fatwas* of the Companions, because following is better than innovating and because the Companions had been present with the Prophet and so their position was more likely to be correct. They are the Imams who are followed. Most of the *fuqaha’* preferred their opinions. It is reported that Abu Hanifa used to say, “When I do not find a ruling in the Book of Allah or the *Sunna* of the Messenger of Allah then I can take the statement of his Companions if I wish and leave those of other people. But I do not disregard their words for the words of anyone else. But when it is a question of Ibrahim an-Nakha‘i, ash-Sha‘bi, al-Hasan, Ibn Sirin, or Sa‘id ibn al-Musayyab, then I can exercise

ijtihad in the same way that they did." Since this was the position of Abu Hanifa, the Imam of the people of Iraq, on the opinions and positions of the Companions, others must have been still more inclined to accept their *fatwas* and what is reported from them.

Many *fatwas* of the Companions were transmitted at that time. The minds of the *fuqaha'* were focused on these *fatwas* and they used them as a model when exercising their *ijtihad*. They followed the same path as the Companions, respected their opinions and relied on them when there was nothing in the Book or *Sunna*. When the Companions agreed on an opinion, the *mujtahids* after them were obliged to accept it. If one of them stated an opinion not known to be opposed, the majority of the *fuqaha'* accepted it. If there was a disagreement between them, many of the *mujtahids* chose from their opinions that which agreed with their own inclination, and they did not leave the framework of those opinions for any others.

The *fuqaha'* in the time of the *Tabi'un* and *mujtahids* acted in the same way, even if they did not consider those *fatwas* to be an independent principle or a legal rule in the *Deen*. Perhaps they did so because they saw that the Companions had witnessed the descent of Revelation of the Qur'an to the Messenger and must have derived their opinions from their knowledge of the actions of the Messenger of Allah, and no one is permitted to exercise *ijtihad* about a matter ascribed to the Messenger. So they did not consider the Companions' opinion to be mere legal *ijtihad*: it was closer to the *Sunna* than to *ijtihad*. The Companions are followed because they were the first teachers who spread Islamic *fiqh* in all directions. They were stars shining with the primal light of Islam.

In this period, Abu Hanifa studied with the shaykhs of opinion and some of the people of tradition. He preferred them and put them ahead of his own opinion. Ash-Shafi'i reported that he used to say about their opinions, "Their opinions are better for us than our opinion for ourselves." We read in *I'lam al-Muwaqqi'in*, "Ash-Shafi'i said in the first version of the *Risala*, 'They are above us in every science, *ijtihad*, scrupulousness and intellect.'"

The Sects

Abu Hanifa met people from various Islamic sects and studied with some of them and examined their opinions as has been mentioned. Hence, it is appropriate to give a brief summary of the sects that existed in his time, in view of the fact that he was aware of their opinions.

The Shi'ites

The Shi'a were the oldest of the Islamic sects. They appeared with their political position at the end of the reign of 'Uthman and grew and flourished in the time of 'Ali, since, when he mixed with people, that increased their admiration for his gifts, the strength of his *deen* and knowledge. Shi'ite agents exploited that admiration and began to disseminate their sect. In the Umayyad period, when injustices were perpetrated against the descendants of 'Ali and the Umayyads injured them, people's love and compassion for them increased and they saw 'Ali and his sons as martyrs to that injustice. So the Shi'ite school expanded and its supporters increased.

The origin of the sect

The separation of the Shi'a from the body of the Muslims was political in origin and turned on the matter of how the khalif of the Muslims should have been decided upon. Their difference with the majority was based on two things. Firstly, the khalifate was a matter to be decided, not by the community as a whole, but by specific appointment. The khaliphate is the pillar of the *Deen* and the rule of Islam and, in their view, it was inconceivable that the Prophet would have ignored it and left it up to the community to decide. The *khalifa* must have been specified for them and was protected from major and minor wrong actions. Secondly, and following on from that, they maintained that 'Ali was the *khalifa* chosen by the Prophet, may Allah bless him and grant him peace, and was the best of the Companions.

Although this was the basis of their position, the Shi'a were not all the same. Some were excessive in their esteem for 'Ali and his descendants and some were more balanced. The balanced ones were content to prefer 'Ali to the other Companions without declaring anyone an unbeliever, whereas the excessive sects of the Shi'a elevated 'Ali to the rank of prophethood and some of them even went so far as to deify him. Some of them

claimed that God was incarnate in the Imams, ‘Ali and his sons, espousing a doctrine similar to Christian incarnation. Some of them believed that every Imam had divinity incarnate in him which then transmigrated to the next Imam.

Most of the Imami Shi‘ites agree that the last Imam did not die but is still alive and will return and fill the earth with justice as it is now filled with injustice. One group, the Seveners, claimed that ‘Ali ibn Abi Talib is alive and will not die and another group said that Muhammad ibn al-Hanafiyya[1] is alive and being nourished by honey and water. Various groups claimed that certain prominent people were not dead or killed but were still alive.

The Twelvers say that the twelfth Imam, Muhammad ibn al-Hasan al-‘Askari, called al-Mahdi, entered the cellar of his house and disappeared when he was arrested with his mother. They believe that he is the Mahdi and will emerge at the end of time and fill the earth with justice, and they are still waiting for him. Every night they stand after the *Maghrib* prayer at the door of this cellar and they bring a mount, call his name, and call on him to come out until the stars appear. For evidence, they adduce the story of the People of the Cave in the Qur’an.

Some extreme Shi‘a combined these views with social ideas in a very corruptive manner. They allowed the consumption of wine and carrion, permitted incestuous marriage, and interpreted the words of Allah, *“Those who believe and do right actions are not to blame for what they have eaten provided they are godfearing and believe and do right actions, and then are godfearing and believe, and then are godfearing and do good,”* (5:93) to mean that the prohibitions, like carrion, blood and pork, are allusions to people who must be hated, like Abu Bakr, ‘Umar, ‘Uthman and Mu‘awiya, and that all the obligations and prohibitions of the Qur’an bear metaphorical meanings.

So we see that the Shi‘ites were an amalgam of opinions and confused ideas into which a great number of false concepts from ancient religions crept wearing Islamic guise. European orientalists have posited numerous theories about their origin: Judaism (through the Yemeni Jew, ‘Abdullah ibn Saba’), ancient Persia with its entrenched concept of dynastic succession, or various eastern creeds like Buddhism, Manichaeanism and others.

There is no doubt that Shi‘ism, with its sanctification of the family of the House, draws from many ancient Asiatic religions, including the Hindu belief of reincarnation in which the soul moves from one person to another. The concept of divine incarnation comes from the Christians and Brahmanism. Various Messianic concepts are taken from Judaism.

After this brief glance at the basic forms of Shi‘ism, we will mention some of their branches which were active at this time.

The Saba’ites

They were the followers of ‘Abdullah ibn Saba’, a Jew from the people of Hira who made a display of Islam. His mother was a black slave, which is why he is sometimes referred to in sources as Ibn as-Sawda’. He was one of the strongest agitators against ‘Uthman. He was energetic in spreading his ideas and corruption among the Muslims, including many false things about ‘Ali.

He began to circulate among people that he had found in the Torah that each Prophet has an heir and that ‘Ali was the heir of Muhammad and that he was the best of heirs as Muhammad was the best of Prophets. Then he mentioned that Muhammad would return to life. He used to remark, “I marvel at those who say that ‘Isa will return but do not say that Muhammad will return.” Then he went further and attributed divinity to ‘Ali.

The Kaysanites

They were the followers of al-Mukhtar ibn ‘Ubayd ath-Thaqafi. He had been a Kharijite and then became one of the partisans of ‘Ali. He came to Kufa when Muslim ibn ‘Uqayl came there from al-Husayn to ascertain its position and report back to him. ‘Ubaydullah ibn Ziyad had al-Mukhtar flogged and then put him in prison until al-Husayn was killed. After this, his sister’s husband, ‘Abdullah ibn ‘Umar, interceded for him and he was released provided that he left Kufa. He went to the Hijaz.

It is reported that he stated, “By Allah, I will seek revenge for the blood of the wronged martyr, the master of the Muslims and the son of the daughter of the master of the Muslims, al-Husayn ibn ‘Ali! I will kill the number of those who killed Yahya ibn Zakariya to avenge his death!” Then he joined Ibn az-Zubayr and pledged him allegiance on the condition that he should be appointed to high office if he was successful and that he would join him in the fight against the people of Syria. Then he returned to Kufa after Yazid’s death and told people, “The Mahdi has sent me to you as his representative. He has commanded me to kill the heretics and revenge the blood of the people of the House and defend the weak.”

He claimed that he had been sent by Muhammad ibn al-Hanafiyya, because he was the descendant most entitled to revenge al-Husayn and because Muhammad was much loved and esteemed by people owing to his great knowledge and gnosis. Muhammad proclaimed himself free of al-Mukhtar before a gathering of people when he heard about his lies, delusions and hidden aims.

The Kaysanite doctrine did not claim that the Imams were divine. It was based on the premise that the Imam was a holy person who was owed absolute obedience and was protected from error. Like the Saba’ites, they believed that the Imam would return – either that he had died and would be resurrected or that he was not dead at all. Another part of their heretical doctrines was that of *bada’*: that Allah could change His will or decree when circumstances changed. They also believed in the passing of the soul into a new body.

The Zaydites

This is the group of Shi‘ites closest to the Muslim Community. They are not excessive in their dogma and most of them do not proclaim any of the Companions of the Messenger of Allah, may Allah bless him and grant him peace, to be an unbeliever nor raise any of the Imams to the rank of a deity or a Prophet.

Imam Zayd ibn ‘Ali rebelled in Kufa against Hisham and was killed. His view was that the Imam is stipulated by description, not by name, and the qualities which the Imam must have to receive people’s allegiance is that he is descended from Fatima, is scrupulous, the possessor of knowledge, generous, and that he summons people to himself. Many Shi‘ites opposed him regarding the precondition of craising his banner. His brother, Muhammad al-Baqir, argued him about that and said, “According to your view, your father was not an Imam because he did not rebel or call for rebellion.”

The Zaydites also held that it is permitted for the less superior to be Imam. So if a superior Imam possesses these qualities and is more entitled but those in authority choose and give allegiance to someone not as good, he is a valid Imam and must be obeyed. This, in their opinion, was the basis for the validity of the khalifate of Abu Bakr and ‘Umar and not proclaiming the Companions who gave them allegiance to be unbelievers. Zayd thought that ‘Ali was the best of the Companions, but the khalifate went to Abu Bakr for a benefit which the Companions perceived and in order to preserve the religious principle of suppressing seditions and heartening of the populace. People might still have resented ‘Ali because the blood was not yet dry on his sword which he had wielded against them.

The Zaydis also believed that there could be two Imams in two different areas so that each was an Imam in his region. They further believed that the one who commits a major sin will be in the Fire forever if he does not sincerely repent. They derived this from the Mu‘tazilites because Zayd followed the Mu‘tazilite school as he was connected to their shaykh, Wasil ibn ‘Ata’.

The Imamites

The Imamites are those who state that the imamate was confirmed by stipulation from the Prophet, may Allah bless him and grant him peace, by a clear text and certainty and that it was a definite and specific appointment. They cite certain traditions from the Prophet, as well as particular events in the life of the Prophet, as evidence for the appointment of ‘Ali. They agree that al-Hasan and then al-Husayn were the Imams after ‘Ali. At this point, however, there is disagreement and they divide into groups, the largest of which are the Ithna ‘asharites (Twelvers) and Isma‘ilis.

The Ithna ‘asharites (Twelvers)

They believed that after al-Husayn, the imamate went to ‘Ali Zayn al-‘Abidin, then Muhammad al-Baqir, followed by Ja‘far as-Sadiq, then his son Musa al-Kadhim, then ‘Ali ar-Rida, then Muhammad al-Jawwad, then ‘Ali al-Hadi, then al-Hasan al-‘Askari and then his son Muhammad, the twelfth Imam. They believe that he has gone into occultation.

The Isma‘ilis

They are a branch of the Imamites who take their name from Isma‘il ibn Ja‘far. They are also called the Batiniya because of their view about the “concealed Imam”. This group believe that Ja‘far designated his son, Isma‘il, as Imam. The result of this is that, even though he died before his father, the imamate continued among his descendants. So the imamate passed to his son Muhammad al-Maktum, the first of the concealed Imams, and then to his son Ja‘far al-Musaddiq and then his son Muhammad al-Habib, the last of the concealed Imams, and then to his son, ‘Abdullah al-Mahdi, who gained control over North Africa and from whom the Fatimid dynasty derives.

The Kharijites

The Kharijites were the most active of the Islamic sects in defending their doctrine. They showed immense zeal for their ideas, intense religiousness in general, and extreme recklessness in defence of their claims and ideas. In their position, they clung to expressions which they took literally, believing that theirs was the pure *Deen* from which no believer could be permitted to deviate. Anyone who followed a different path was someone whose soul made him incline to lies and moved him to disobedience. Their attention focused on the Qur’anic phrase, *“Judgement belongs to Allah alone”,* and they took this as their motto. They shouted it in the faces of their opponents and ended every conversation with it.

Whenever they saw ‘Ali speak, they shouted these words at him and it is related that ‘Ali said about them when they kept repeating it, “A true word by which something false is meant. Yes, judgement belongs to Allah alone but those people are saying, ‘Amirate belongs to Allah alone.’ There must be a leader for people whether pious or corruptÉ Through him, booty is collected, the enemy is fought, the roads are made safe and the strong are made to provide for the weak – until the pious leader finds rest or the people find rest from the corrupt leader.”

The Kharijites were carried away by the idea of being free of ‘Uthman, ‘Ali and unjust rulers until that notion overpowered their minds and perceptions and completely prevented them from ascertaining the truth. They sometimes acted with those who declared themselves quit of ‘Uthman. Sometimes, the disagreement was so intense that it led to a split with them. Ibn az-Zubayr rebelled against the Umayyads and the Kharijites helped him and promised to fight on his side. When they learned that he had not declared himself free of his father, Talha, and of ‘Ali and ‘Uthman, they left him.

Although the Kharijites were sincere in their attack on ‘Ali and the Umayyads after him, there were other factors which led them to rebel one of the most significant of which was their intense resentment towards Quraysh for appropriating the khalifate. Most of them were from the tribes of Rabi‘a who had a long-standing enmity towards the tribes of Mudar, of which Quraysh was one. This enmity preceded Islam. Most of the Kharijites were Arabs, and very few clients were to be found among them, even though their tenets should have made the clients eligible for the khalifate. The views of the Kharijites clearly show their thinking, revealing their simplistic minds, superficial views and rancour towards Quraysh and all the tribes of Mudar.

- The first and strongest of their views was that the post of *khalifa* is to be filled by choosing any free, sane, healthy Muslim man who attends to the welfare of the Muslims. It is not for one group rather than another and someone can only remain as khalif so long as he establishes justice, supports the *Shari‘a* and is far from error and deviation. If he transgresses, he should be deposed or killed.

- They did not think that any of the families or tribes of the Arabs should be singled out for the khalifate or that the khalifate should be restricted to Quraysh as others stated, or even that it should be for an Arab

rather than an non-Arab. In their view all were the same. Indeed, they preferred that the khalif should not be from Quraysh so that it would be easier to depose or kill him if he opposed the *Shari'a* or deviated from truth, since then there would be no partisanship to protect him, tribe to defend him, or shelter but the shelter of Allah.

• Najdite Kharijites thought that people did not need a khalif at all. Muslims should be equitable in their mutual dealings. They thought that if that could only be achieved by means of having a khalif to encourage them to uphold the truth and establish it, then it was permitted. But in their view the existence of a khalif was not a necessary obligation but was merely permitted when needed for public welfare.

• The Kharijites thought that people who committed wrong actions were unbelievers. They did not differentiate between a sin which was done with an evil intention and an error of opinion or *ijtihad* which led to something incorrect. That is why they said that 'Ali was an unbeliever when he agreed to arbitration although it was not his choice. If, in their opinion, arbitration was not correct, then the fact that they said 'Ali was an unbeliever indicates that they considered that an error in *ijtihad* takes a person out of the deen. That was also their view of Talha, az-Zubayr, 'Uthman and other great Companions who differed from them in minor matters – they held that they were unbelievers. They had various justifications for this which were based on false interpretation of *ayats* of the Qur'an.

This is the sum of the opinions which most of the Kharijites embraced while they did not agree on other positions, opinions or views. They frequently disagreed on even the smallest of matters. Perhaps this is the secret of the great number of their defeats. They were divided into many groups.

Murji'ites

The Murji'ites began as a political group but, like the other sects, they began to mix politics with the principles of the *deen*. The basis of their difference was a negative view of a matter which preoccupied many Muslim minds at the time: the question of the status of someone who commits a major sin. This question animated the Kharijites, Shi'ites and Mu'tazilites. However, as they began politically, we consider them to be a political group.

The first seed which produced this group was sown in the time of the Companions, at the end of the rule of 'Uthman when there was unrest about his rule which ultimately culminated in his murder. A group of Companions remained silent and refused to participate in the civil war which shook the Muslims profoundly. They held to the *hadith* reported by Abu Bakr from the Prophet: "There will be civil strife in which those who sit will be better than those who walk, and those who walk will be better than those who run. When it comes, whoever has camels should stay with his camels; whoever has sheep should stay with his sheep; and whoever has land should cling to his land." A man said, "Messenger of Allah, what about someone who has neither camels, sheep or land?" He replied, "He should go to his sword and blunt its edge with a stone and then save himself if he can."

They refused to become involved in the war between the Muslims and did not concern themselves with ascertaining who was in the right. They included Sa'd ibn Abi Waqqas, Abu Bakra, 'Abdullah ibn 'Imran and many others. They refused to make a judgement about either group and left the matter to Allah while other parties were quick to apportion blame.

Then, when there was a lot of discussion about people who commit a major sin and the Kharijites claimed that such people were unbelievers and made war on all Muslims, some such people refused to take sides in the argument and withheld (*irja'*) judgement as they had withheld judgement on other occasions. Hence they were called Murji'ites ("deferrers"). This time the deferment of judgement was not a political one as the first had been but a doctrinal one, implying that belief consists of affirmation, assent, belief, and knowledge, that an act of disobedience does not impair faith, that faith is distinct from action.

So the term "Murji'ite" was applied to two groups: one who refused to take sides in the disagreement between the Companions and which continued into the Umayyad period and a second group who thought that Allah would forgive all sins except disbelief and so an act of disobedience did not harm faith just as an act of obedience was of no benefit without faith. Unfortunately, there were corrupt people within this school who

used the position as an open door to evil. That is why Zayd ibn ‘Ali said about this, “I am free of the Murji’ites who appease the profligate by the promise of Allah’s pardon.”

The Mu‘tazilites used the term “Murji’ite” for all those who did not think that someone who committed a major sin would be eternally in the Fire and held the position that such people would be punished for a time and then pardoned by Allah. This is why it was applied to Abu Hanifa and his companions, may Allah be pleased with him. This is why ash-Shahrastani states in *al-Milal wa’n-Nihal*: “Abu Hanifa and his companions are called ‘Murji’ites of the *Sunna’*. A number of those who wrote treatises counted him among the Murji’ites. Perhaps the reason for that was that he used to say, ‘Belief is affirmation with the heart; it does not increase or decrease.’É There is another reason for this. He was an opponent of the Qadarites and Mu‘tazilites who appeared early on, and the Mu‘tazilites nicknamed all who opposed them in the question of Qadar ‘Murji’ites.’”

Many others beside Abu Hanifa and his companions are considered Murji’ites by this definition, including al-Hasan ibn Muhammad ibn ‘Ali, Sa‘id ibn Jubayr, Talq ibn Habib, Muqatil ibn Sulayman, Hammad ibn Abi Sulayman, and others. All of them were Imams of *fiqh* and *hadith* who did not say that those who committed major sins were unbelievers or deemed that they would be in the Fire forever.

The Jabarites

During the time of the Companions, may Allah be pleased with them, the question of the Divine Decree and man’s will and power in relation to the will and power of Allah Almighty was a subject discussed by the Muslims but the nature of the Arab mind and soul, close as it was to the natural state, prevented them from going too deeply into the matter and becoming obsessed by it. After their time, however, when the Muslims started to mix with the people of ancient religions and other intellectual traditions, their schools and sects multiplied and their investigations expanded and they followed the methods of the adherents of ancient religions in studying these topics.

One group claimed that man does not create his actions and that no actions whatsoever can be truly ascribed to him. The basic position of this school was to deny that the action of the slave had any reality and to ascribe it to Allah altogether. Since the creature has in reality no ‘capacity’ of his own, it must be that he is compelled in his actions without any power, volition or choice. Allah Almighty creates the actions in him and actions can only be ascribed to him metaphorically in the same way as they are ascribed to inanimates, just as a tree produces fruit, a stone moves, water flows, or the sun rises and sets, and other such things. Reward and punishment are predetermined and so obligation is also predetermined. It is difficult to ascertain who was the first to espouse this position, but the idea was certainly already widespread in Umayyad times so that it became a school of thought.

Although it is difficult to state with certainty who was responsible for the formation of this position as a school, it is usually attributed to al-Jahm ibn Safwan because he was the major proponent of it. He also espoused other views. He claimed that the Garden and the Fire will vanish and that nothing is eternal, and that when “eternity” is mentioned in the Qur’an, it merely means “a long time”. He also stated that faith was only recognition and that disbelief was ignorance, and that the knowledge and speech of Allah are located in time. He went further and stated that Allah cannot be described with any attributes, even life, and that the Qur’an is created.

The Mu‘tazilites

This group originated during the Umayyad period and dominated Islamic thought in the Abbasid era for a long time. Iraq, in the time of the Rightly Guided Khalifs and Umayyads, was home to a number of ethnic and religious groups of different origins. Some were descended from the ancient Chaldean inhabitants of Iraq; others were Persians, Christians, Jews, or Arabs. Most of them became Muslims. Some understood Islam in the light of the ancient teachings of their own traditions. Some took Islam from its pure source and imbibed it without alteration, but even so their feelings and ideas were not purely Islamic.

There was an involuntary inclination towards the past of the kind which psychologists call "unconscious". That is why, when there was much civil war at the time of 'Ali ibn Abi Talib in Iraq, the ancient sects were awakened and appeared in Iraq, gathering around the Kharijites and Shi'a. It was in the midst of this jumble of opinions and confused sects that the Mu'tazilites made their appearance.

Scholars disagree about when the Mu'tazilites first appeared. Some think that they began with the people of 'Ali who withdrew from politics and devoted themselves to the pursuit of knowledge when al-Hasan surrendered the khalifate to Mu'awiya. At-Tara'ifi states in his book, *The People of Sects and Innovations*: "They called themselves Mu'tazilites. When al-Hasan offered his allegiance to Mu'awiya, they withdrew (*i'tazala*) from al-Hasan and Mu'awiya and all people. They were among the adherents of 'Ali. They kept to their homes and mosques, saying 'We are busy with knowledge and worship.'"

Most sources state that the progenitor of the Mu'tazilites was Wasil ibn 'Ata'. He was one of those who used to attend the gathering of al-Hasan al-Basri at the time when the question arose which preoccupied the minds of so many people of the period: the question of whether committing a major wrong action makes its perpetrator an unbeliever. Wasil said in opposition to al-Hasan al-Basri, who had refused to become involved in the debate, "I say that the one who commits a major wrong action is neither a believer nor an unbeliever. He is between the two positions." Then he withdrew *(i'tazala*) from al-Hasan's assembly and set up another in the mosque. From this you see why he and his people were called Mu'tazilites.

Certain orientalists, however, believe that they were called that because they were fearful pious men who withdrew from the pleasures of life as is indicated by their name. In fact, not all the men ascribed to this group conformed to that description. Some were suspected of acts of disobedience and some were godfearing.

The doctrine of the Mu'tazilites

According to Abu'l-Hasan al-Khayyat in *al-Intisar*, "No one can properly be called a Mu'tazilite unless he holds to all five tenets of their school: *Tawhid*, Justice, the Promise and the Threat, the Position between the Two Positions, and Commanding the Right and Forbidding the Wrong. Only when a man maintains these five, is he, properly speaking, a Mu'tazilite. These are the tenets of the Mu'tazilite school." We will speak briefly about each of them.

Tawhid

A particular understanding of *tawhid* was at the core of their doctrine. Al-Ash'ari described their position in his book, *Maqalat al-Islamiyyin*:

> Allah is one. There is nothing like Him. He is the All-Hearing, All-Seeing. He is neither body nor spirit. He does not have corporeal form or shape, or flesh or blood. He is not substance or accident. He does not have a colour or taste, smell or tactility, heat, cold, wetness, dryness, height width, or depth. He does not have joining or separation, movement or stillness. He has no parts or components, or limbs or members. He has no directions: no right or left, front or back, above or below. He is not circumscribed by place nor is He subject to time.É He cannot be incarnate in any place. He is not described with any of the attributes of creation which involve contingency nor is He described as being finite or as being limited. He does not beget and is not begotten. No quantity can encompass Him; no veil conceal Him; no sense perceive Him. He cannot be compared to mankind nor does He resemble creation in any wayÉ He was First before events in time and before contingent things, and existed before all creatures. He is Knowing, Powerful, Living and will always remain so. Eyes cannot see Him; sight cannot perceive Him; imagination cannot encompass Him. He is Knowing, Powerful, Living, in a way dissimilar to all others who are knowing, powerful, living. He alone is timeless and there is nothing timeless but Him, no god but Him and He has no partner in His kingdom.

On this basis, the Mu'tazilites asserted that it was impossible to see Allah on the Day of Resurrection since that would involve corporeality and direction. The Divine Attributes were nothing other than the Essence. The Qur'an was created by Allah since He does not (in their view) have the attribute of speech.

Justice

Al-Mas‘udi explained this in *Muruj adh-Dhahab*:

> It is that Allah does not like injustice nor does He create people’s actions. They do what they are commanded or forbidden to do by the power which Allah has created for them and placed in them. He commands only what He wants and forbids only what He dislikes. He takes charge of every good action He has commanded and is free of every evil action He has forbidden. He does not oblige people to do anything they are incapable of and He does not desire of them anything they do not have the power to do. No one has power to withhold or give except by the power of Allah which He has given them and is in their possession. Had He so willed, He could have compelled creation to obey Him and prevented them from disobeying Him, but He did not do that.

The Promise and the Threat

This is that Allah repays all who do good with good and all who do evil with evil. He does not forgive anyone who does major wrong actions if he does not repent.

The “Position between the Two Positions” (concerning belief and unbelief)

Expounding the Mu‘tazilites’ view on the “Intermediate Position”, ash-Shahrastani said, “This position was stated clearly by Wasil when he said that faith designates the qualities of good and when they are combined in a person he is called a believer, which is a name of praise. An impious man does not have all the qualities of good and does not deserve the name of praise. Hence he is not called a believer – but nor is he an unbeliever absolutely, for the *shahada* and good actions exist in him which cannot be denied. But if he leaves this world having committed a major sin without repenting for it, he is one of the people who will remain in the Fire forever, since in the Next World there are only two groups: one in Paradise and one in Hell. However, the Fire will be alleviated for him and he is above the level of the unbelievers.”

Commanding the Right and Forbidding the Wrong

It is an obligation for all believers to disseminate the call of Islam, guide the misguided, and direct those in error as much as they can by means of both exposition and the sword.

The Mu‘tazilites’ method of deriving their doctrine

In explaining their doctrine the Mu‘tazilites relied on reason and not transmission. They relied on the intellect, restricting its scope only when it was a question of the commands of the *Shari‘a.* Every question was logically examined and they accepted what was logical and rejected what was not logical.

This rationalistic approach was the result of several factors: their residence in Iraq and Persia which were influenced by ancient religions and civilisations, their descent from non-Arabs, their clashes with opponents, the spread of translations of the ancient philosophers in these places, and their mixing with Jews and Christians and others who translated these ideas into Arabic.

One of the effects of their reliance on logic was that they judged that things were good or abhorrent by reason. They used to say: “All things are intelligible to the intellect and must be examined by the intellect. Beauty and ugliness are two essential qualities of good and evil.” Al-Jubba’i stated, “Any act of disobedience which Allah can permit to happen is ugly because of its prohibition and any act of disobedience which He never permits is ugly in itself: like ignorance of Him and believing the opposite of that.” They based on this the idea of the existence of the best of all possible worlds. They said that only good issues from Allah.

The Mu‘tazilites’ defence of Islam

Groups of Magians, Sabaeans, Jews and Christians and others entered Islam, their minds still full of the teachings of those religions, and their understanding of Islam necessarily being filtered through them. Some pretended to have faith out of fear of the ruler, concealing their old belief, and began to try to corrupt the Muslims' *deen*, to make them doubt their own beliefs, and to introduce ideas and opinions for which Allah had given no authority. The fruits of their efforts appeared: there were anthropomorphists, *zindiqs* and many other groups. The Mu'tazilites tried to defend Islam, and their Five Tenets were the result of their sharp debates with their opponents. The tenet of *Tawhid* was formulated to refute the anthropomorphists; Justice was to refute the Jahmites; the Promise and Threat was to refute the Murji'ites; and the Position between the Two Positions was to refute the Kharijites who said that anyone who commits a sin was unbeliever.

The khalif's patronage of the Mu'tazilites

The Mu'tazilites appeared at the time of the Umayyads but the Umayyads did not oppose them because they did not provoke any discord or declare war. They were a group who took no action beyond thinking, countering evidence with evidence and proof with proof, and analysing matters by sound criteria. They did not involve themselves in politics – their weapons were exposition and proof, not swords. Al-Mas'udi reported that Yazid II espoused their tenets.

When the Abbasids came to power, heresy and the *zindiqs* had become a flood and the khalif found in the Mu'tazilites a sword to employ against *zindiqs* and left them to combat heresy. When al-Ma'mun came to power, he took their side and brought them near to him. He saw that there was a disagreement between them and the *fuqaha'*, and thought that debates between the two groups would result in the emergence of a single point of view, but he was completely wrong in this.

Al-Ma'mun then sought to use the power of the state to force the *fuqaha'* and *hadith* scholars to adopt the opinion of the Mu'tazilites on the Qur'an. This is not the proper role of the state. If it is forbidden to force people to embrace the *deen*, how can they be forced to accept a tenet the denial of which does not constitute disbelief? He tried to force the *fuqaha'* to declare that the Qur'an was created. Some of them complied out of *taqiyya* and fear, not true belief and adherence, while others endured violence, humiliation and long imprisonment and would not say anything other than what they believed.

That inquisition lasted after al-Ma'mun through the khalifates of al-Mu'tasim and al-Wathiq. Al-Wathiq tried to coerce people to deny that Allah will be seen – another orthodox position denied by the Mu'tazilites. When al-Mutawakkil came to power, this inquisition stopped, and things were allowed to take their course and opinions to evolve naturally, and people were left to choose their own position regarding these matters.

The position of the Mu'tazilites among their contemporaries

The *fuqaha'* and *hadith* scholars attacked the Mu'tazilites and so they were caught between strong opponents on either side: the *zindiqs* and those like them on one side, and the *fuqaha'* and *hadith* scholars on the other. One can see in the arguments and discussions of the *fuqaha'* that they pilloried the Mu'tazilites at every opportunity. One hears ash-Shafi'i, Ibn Hanbal and others criticising the science of *kalam* and those who took knowledge through the method of the *mutakallimun*. Why did the *fuqaha'* dislike the Mu'tazilites when both groups were trying to support the *deen* and did not spare any efforts in its defence? It seems that there were a number of factors which combined to produce such enmity.

The suspicions of the *fuqaha'* and *hadith* scholars

The *fuqaha'* and *hadith* scholars were strong opponents of the Mu'tazilites and suspected them of deviation. Ash-Shaybani gave a *fatwa* that anyone who prayed behind a Mu'tazilite had to repeat the prayer. Imam Abu Yusuf considered them *zindiqs*. Imam Malik would not accept the testimony of any of them. They were suspected of corruption and committing *haram* acts. In fact, the Mu'tazilite school embraced all sorts of individuals.

Disputes of the Mu‘tazilites and the science of *kalam*

Kalam was used by the Mu‘tazilites when debating with their opponents, whether Rafidites, Magians, dualists, people of other sects, specialists in *fiqh* and *hadith*, and others. The whole Islamic community took part in these arguments and debates for about three generations, during which assemblies of rulers, ministers and scholars flourished and opinions were exchanged. Internecine fights between the schools and sects caused reverberations that affected Islamic thought as a whole. Islamic thinking became embellished with Persian, Greek or Hindu ideas. Each faction was distinct in their argument in specific ways, while often they did not differ in their general position in the *deen*.

The methods of deduction employed by the Mu‘tazilites were different from those of others among the Islamic Community and their deductive premises also differed. There were several distinct characteristics in the way they debated.

- The Mu‘tazilites avoided imitation and were averse to following others without investigation, examination, comparison, proofs and proper criteria. Their respect was for opinions and not names, for the truth and not the speaker. Hence they did not imitate one another. The rule which they followed was that every responsible person is answerable for the principles of the *deen* to which his *ijtihad* has led him. Perhaps that is why they split into so many groups.

- They relied on the intellect to establish their articles of faith, finding support for their positions in the Qur’an. They did not have much knowledge of *hadiths* because they did not use them for doctrine or evidence.

- They took from classical scientific sources which were translated in their time. They borrowed from some of those sciences and used them to support their arguments in clashes with opponents in the field of *kalam*. They were joined by many Muslims educated in the foreign education and philosophical systems which were nurturing the Arab intellect in that time, which is why there were many distinguished writers and philosophers among them.

- They excelled in language, eloquence and clarity of exposition. Their men included eloquent orators and debaters who were skilled in debate, knew its rules and were experienced in its methods and how to defeat opponents. Their leading figure, Wasil ibn ‘Ata’, was a notable orator.

Chapter Four
The Opinions of Abu Hanifa

In the remaining part of this book we will discuss two matters: firstly, Abu Hanifa's opinions on questions of politics and dogma which exercised the minds of many of the scholars of his time, and secondly, his *fiqh*.

This first chapter will deal with his opinion regarding the khalifate and who was entitled to have it, and his view about the preconditions for being the khalif and the basis of allegiance. We will also look at his views on the articles of faith, the nature of sin and those who commit it, and man's actions and their relationship to the decree. We will also discuss the issue of "*qadar*" (decree) which was famous in his time shall also be considered. Then we will move on to his opinions on social and ethical matters.

Abu Hanifa's political views

Abu Hanifa's view on politics has not been precisely explained and analysed in the sources examined. We must, therefore, investigate scattered reports amongst the sources in order to be able to formulate from them a clear picture of his political thought.

Historical sources make two things evident about his life. One is that he was biased in favour of the descendants of 'Ali and Fatima and was almost martyred for his support of them. The second is that, in spite of this, he did not participate in any of the 'Alawite rebellions, either in the Umayyad or Abbasid periods. He confined himself to verbal support in his lessons and giving encouragement if he was asked for a *fatwa* on the matter, as he did in the case of al-Hasan ibn Qahtaba. He did not exceed the role of a *mufti* who is asked for *fatwa* and answers in accordance with his conscience without paying any attention to the authorities. Thus it is certain that Abu Hanifa had Shi'ite leanings but they did not go beyond that. To which Shi'ite group was he closest? The question will now examine that question.

Abu Hanifa did not have the kind of Shi'ite perspective which blinds a person to perceiving the virtues and ranks of the Companions as a whole. He ranked Abu Bakr and 'Umar before 'Ali, and he mentioned his own esteem and veneration for the *taqwa* and generosity of Abu Bakr so that he tried to emulate him in his generosity and trading practice. He had a silk shop in Kufa as Abu Bakr had a silk shop in Makka. He placed 'Umar after Abu Bakr but he did not put 'Uthman before 'Ali. Ibn 'Abdu'l-Barr says in *al-Intiqa'*: "Abu Hanifa gave preference to Abu Bakr and 'Umar and left 'Ali and 'Uthman." His son Hammad said, "We love 'Ali more than 'Uthman." But in spite of his preference for 'Ali, he did not curse 'Uthman. He prayed for mercy on him when he was mentioned and may have been the only person in Kufa to do so.

He was not known to curse or accuse anyone, as he mentioned when he met 'Ata' ibn Abi Rabah in Makka. ' Ata' asked him, "Who are you?" "One of the people of Kufa," he replied. "From the people of a city who have divided their *deen* into parties?" "Yes," he replied. Ata' inquired, "From which are you?" He replied, "From those who do not curse the *Salaf* nor hold Qadarite views and do not consider a person an unbeliever on account of a wrong action."

Al-Makki reports in *The Virtues* that Abu Hanifa said, "I came to Madina and went to Abu Ja'far Muhammad ibn 'Ali (al-Baqir). He said, 'Brother of Iraq! Do not sit with us.' I sat down and asked, 'May Allah put you right. What do you say about Abu Bakr and 'Umar?' He replied, 'May Allah have mercy on both of them!' I said, 'In Iraq they say that you disavow both of them.' He exclaimed, 'I seek refuge with Allah! They have lied, by the Lord of the Ka'ba! Do you not know that 'Ali married his daughter, Umm Kulthum bint Fatima, to 'Umar ibn al-Khattab? Do you not know who she was, fatherless one? Her grandmother was Khadija, the mistress of the women of the Garden and her grandfather was the Messenger of Allah, may Allah bless him and grant him peace, the Seal of the Prophets, the Master of the Messengers, and the Messenger of the Lord of the worlds, and her mother was Fatima, the mistress of the women of the worlds. Her brothers were al-Hasan and al-Husayn, the lords of the young men of the Garden, and her father was 'Ali ibn Abi Talib, the master of honour in Islam. If he had not been worthy of her, fatherless one, he would not

have married her to him.' I said 'If you would write to them and refute itÉ' He said, 'They are not up to writing. I told you directly not to sit with us and you disobeyed, so what will they do with a letter?'"

From this encounter between Abu Hanifa and Muhammad al-Baqir, one of the Imamite imams, we see that Abu Hanifa wanted to deny espousing distortionate Shi'ite views or disparaging Abu Bakr and 'Umar. Abu Hanifa believed that 'Ali was always in the right but did not attack or abuse his opponents. He stated, "No one fought 'Ali without 'Ali being in the right." He said about the conflict between 'Ali and az-Zubayr, "There is no doubt that Amir al-Mu'minin 'Ali fought Talha and az-Zubayr after they had given allegiance to him and they opposed him." When he was asked about the Battle of the Camel, he said, "'Ali was right in it. He had the best knowledge of the Muslims about the *sunna* of fighting the people of rebellion." He thought 'Ali was in the right but did not speak ill of his opponents.

In respect of his position regarding the Umayyads, we see that he helped Zayd ibn 'Ali when he rebelled against Hisham. He was asked about fighting with him and remarked that Zayd's expeditio resembled that of the Messenger of Allah, may Allah bless him and grant him peace, on the Day of the Battle of Badr. He helped him with money but did not trust his supporters.

His opinion of the Abbasids after the conflict between them and the family of 'Ali was no better than his opinion of the Umayyads. We see that he inclined to Ibrahim when he rebelled against al-Mansur. Al-Makki says in *The Virtues*: "Ibrahim ibn Suwayd stated: 'I asked Abu Hanifa, whom I respected, when Ibrahim ibn 'Abdullah ibn Hasan rebelled, "Which do you prefer after the obligatory *hajj*: going forth with this man or *hajj*?" He replied, "After the obligatory *hajj*, a military expedition is better than fifty *hajj's*."' A woman came to Abu Hanifa in the time of Ibrahim and said, 'My son wanted to join this man but I forbade him.' He said, 'Do not forbid him.' Hammad ibn A'yan said, 'Abu Hanifa encouraged people to help Ibrahim and told them to follow him.'" (pt. 2, p. 84)

Political inclination was not the only sign of Abu Hanifa's ties to the family of the House of the Prophet. There was also an evident scholarly connection. That may well have been the reason for the political inclination. He studied with some of their eminent imams. It is also clear that he thought that the khalifate should go to the descendants of 'Ali and Fatima and that the khalifs contemporary with him were usurpers. So what did Abu Hanifa consider the correct means of choosing the khalif?

Reviewing Abu Hanifa's statements on this subject, we find an illustration which indicates that he thought that a general acclaim of the khalif should precede his taking power. Ar-Rabi' ibn Yunus, the *wazir* of al-Mansur, met with Malik, Ibn Dhu'ayb and Abu Hanifa and asked them about his being khalif. Malik said something mild and Ibn Dhu'ayb said something harsh. Abu Hanifa said, "The one who seeks guidance in his *deen* is slow to anger. If you are true to yourself, you will know that you have not gathered us out of desire for the pleasure of Allah. You want the populace to know that we affirm you out of fear of you. You assumed the khalifate without two of the people eligible to give *fatwa* agreeing on you. The khalifate is by the agreement of the Muslims and consultation with them." (*Virtues*, al-Bazzazi, pt. 2, p. 16)

His opinions on issues of *kalam*

As we have already mentioned, Abu Hanifa studied the positions of the sects of his time and debated with them. He used to undertake journeys for the sake of this debate. His scholarly life began with the study of these sects before he moved on to *fiqh* and became the undisputed imam of the people of opinion. He continued to argue with the various sects when that was necessary. That is why some opinions are reported from him which were dealt with by the *mutakallimun* of his time. There are, for instance, his opinions about the reality of belief, about the status of someone who commits a sin, about the decree (*qadar*), and about the relationship between man's free will and the will of Allah.

These opinions have reached us by two means: through scattered transmissions, both strong and weak, which must be scrutinised and through certain books which are ascribed to him. Abu Hanifa is listed in the *Index* of Ibn an-Nadim as having written four books: *al-Fiqh al-Akbar*, *the Scholar and the Student*, the Letter to 'Uthman ibn Muslim al-Batti (which is about belief and its connection to action) and the *Refutation of the Qadariyya*. All of them are on the science of *kalam* and dogma.

Al-Fiqh al-Akbar is a small treatise of which there are a number of versions. One is that of Hammad ibn Abi Hanifa. Another is the variant of Muti' al-Balkhi known as *al-Fiqh al-Awsat*, with a commentary by Abu'l-Layth as-Samarqandi and 'Ata' ibn 'Ali al-Jurzjani. There are others, including that ascribed to al-

Maturidi, which is used for and against the argument of the Ash'arites. This indicates without a doubt that it is later than al-Ash'ari although they were contemporaries, since al-Maturidi died in 332 AH and al-Ash'ari in 334.

Scholars do not agree about the ascription of this work to Abu Hanifa. When he discusses *al-Fiqh al-Akbar*, al-Bazzazi says in *The Virtues*, "If you were to say that Abu Hanifa did not write any book, I would say, 'That is what the Mu'tazilites say. They claim that he wrote nothing on the science of *kalam*. By that they desired to deny that *al-Fiqh al-Akbar* and the *Scholar and the Student* were by him because he clearly stated in them most of the principles of the people of the *Sunna* and Community. They want to advance their claim that he was one of the Mu'tazilites and that the book was by another Abu Hanifa. This is a clear error: both books were written by Abu Hanifa.'"

We must briefly look at its contents and ascertain whether it can all be correctly ascribed to Abu Hanifa or whether there is some doubt about it. If we look at the order of the best of people after the Prophets in the Indian edition we find that it is Abu Bakr, 'Umar, 'Uthman and then 'Ali. But all transmissions in the various books of Virtues agree that Abu Hanifa did not put 'Uthman before 'Ali.

We also see that this book deals with issues which were not dealt with in his time nor the time before it. For instance, in his time and before, people did not discuss the difference between a sign (*ayat*), *karama* (miracle as a mark of honour) and temptation (*istidraj*). However, this is discussed in this book. Therefore there must be some additions to the book which do not come from Abu Hanifa.

Faith (*Iman*)

There are different transmissions about what Abu Hanifa says about faith. The one we can be most sure about is: "Faith is affirmation and confirmation." He said that Islam is submission and obedience to Allah's command. Linguistically, there is a difference between faith and Islam, but there is no faith without Islam and no Islam without faith. They are like the outward is to the inward. The *deen* is the name given to faith, Islam and the laws of the *Shari'a*. (*al-Fiqh al-Akbar*, p. 11)

So we see that Abu Hanifa did not consider faith to be pure affirmation by the heart alone. He thought that its reality was confirmation by the heart and affirmation by the tongue. He made his views on that clear in a debate between himself and Jahm ibn Safwan.

Al-Makki states in *The Virtues*:

> "Jahm ibn Safwan went to Abu Hanifa to debate with him about *kalam*. When he met him, he said, 'Abu Hanifa, I have come to discuss with you some questions which I have prepared.' Abu Hanifa said, 'Speaking with you is shame and delving into what you are in is a blazing fire.' He asked, 'How can you judge me as you do when you have not heard what I say nor learned it from me?' Abu Hanifa replied, 'Words have been transmitted to me from you which the people of prayer do not utter.' He said, 'Then you judge me in absentia!' He replied, 'You are well-known for that. It is known among both the common and elite and so I am permitted to assert that about you.' He said, 'Abu Hanifa, I will not ask you about anything except faith.' He asked him, 'Do you not recognise faith until the Final Hour so that you have to ask me about it?' 'Yes,' he replied, 'but I am uncertain about it in one area.' Abu Hanifa retorted, 'Doubt in faith is disbelief.' He said, 'It is only lawful for you to clarify how you attach disbelief to me.'
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> "He said, 'Ask.' Jahm said, 'Tell me about someone who recognises Allah in his heart and knows that He is One with no partner or like and acknowledges Allah with His attributes and that there is nothing like Him and then dies before articulating it on his tongue: does he die a believer or unbeliever?' He replied, 'An unbeliever and one of the people of the Fire unless he articulates it with his tongue along with what he knows in his heart.' Jahm asked, 'How can he not be a believer when he acknowledges Allah with His attributes?' Abu Hanifa said, 'If you believe in the Qur'an and accept it as evidence, I will speak to you using it. If you believe in it and but do not accept it as evidence, I will speak to you as one speaks to someone who opposes the religion of Islam.' He replied, 'As someone who believes in the Qur'an and accepts it as evidence.' Abu Hanifa said, 'In His Book, Allah Almighty makes belief involve two limbs: the heart and the tongue.

"The Almighty says: *'When they listen to what has been sent down to the Messenger, you see their eyes overflowing with tears because of what they recognise of the truth. They say, "Our Lord, we believe! So write us down with the witnesses. How could we not believe in Allah, and the truth that has come to us, when we long for our Lord to include us among the people of righteousness?" Allah will reward them for what they say with Gardens with rivers flowing under them, remaining in them timelessly, forever. That is the recompense of all good-doers.'* (5:83-85) So He connected the Garden to both recognition and word and made the believer someone with two limbs: the heart and tongue.

"Allah also says: *'Say, "We believe in Allah and what has been sent down to us and what was sent down to Ibrahim and Isma'il and Ishaq and Ya'qub and the Tribes, and what Musa and 'Isa were given, and what all the Prophets were given by their Lord. We do not differentiate between any of them. We are Muslims submitting to Him." If they believe the same as you believe then they are guided.'* (2:136-137)

"Abu Hanifa continued to quote *ayats* and *hadiths* to this effect. Then he stated, 'If words had not been necessary and mere recognition adequate, Allah would not have mentioned verbal articulation. Iblis would have been a believer because he recognised his Lord and knew that he disobeyed Him.'"

Al-Makki added to what Abu Hanifa said, regarding someone who dies with faith but without affirming it dying an unbeliever, that it means that when he is suspect since he has neither affirmed or openly declared his faith, then he dies an unbeliever. When there is no suspicion, as when he is on an island or in a desert, then he is not an unbeliever. So Abu Hanifa affirms that faith has two parts: firm belief and outward verbal acknowledgement of it. The verbal declaration is necessary.

Thus it is reported from Abu Hanifa that he divided faith into three, and that someone who believes with his heart, affirming it in himself, is a believer with Allah, even if he is not a believer with people. *Al-Intiqa'* clarifies what Abu Hanifa thought of faith and its categories: "Faith is recognition, affirmation and declaration of Islam. People are in three stages in respect of affirmation: some affirm Allah with heart and tongue; some affirm with the tongue and deny with the heart; and some affirm with the heart and deny wih the tongue. As for the person who affirms Allah and what has come from the Messenger of Allah with his heart and tongue, he is a believer with Allah and with people. If someone affirms with his tongue and denies with his heart, he is an unbeliever with Allah and a believer with people because people do not know what is in a person's heart and they call him a believer because of his public declaration of the *shahada*. They do not speak of the heart. The other is a believer with Allah and an unbeliever with people. This is the one who displays disbelief on his tongue through *taqiyya*." (p. 368)

As we see, the school of Abu Hanifa affirms that action is not part of faith. He was opposed in this by two groups; by the Mu'tazilites and Kharijites who considered action to be part of belief so that someone who does not act is not a believer; and by a group of the *fuqaha'* and *hadith* scholars who thought that action was an integral part of belief and affected it so that it can increase and decrease, without that affecting its basic existence. In that view someone who does not carry out the rulings of the *Shari'a* is considered a believer if the principle of affirmation exists, but his faith is not considered complete. Hence faith increases and decreases.

Abu Hanifa did not believe that faith increases and decreases. He considered the faith of the people of Heaven and the people of earth to be the same. He said, "The faith of the people of earth and the people of the heavens is the same; and the faith of the first and the last and the Prophets is the same because we all believe in Allah alone and affirm Him, even if there are many different obligations. Disbelief is one and the attributes of the unbeliever are many. All of us believe in what the Messengers believe, but they have a better reward than we do for faith and all acts of obedience; since they are better in actions, they are better in all matters: reward and otherwise. This does not wrong us because it does not diminish our due. It increases our esteem for them because they are the models for people and the trustees of Allah. No one has the same rank as they do and people only reach excellence by them; all who enter the Garden enter by their call." (al-Bazzazi, pt. 2, p. 141) Many later scholars disagreed with Abu Hanifa's view on this.

Abu Hanifa's position was that belief is confirmation and it does not increase or decrease, and so he did not consider those who disobey the *Shari'a* to be unbelievers since they have their basis of faith. The disobedient are believers who have a mixture of righteous and evil action. Perhaps Allah will turn to them.

These assertions of Abu Hanifa are based on sound logic in conformity with the principle of promise and threat contained by the Qur'an. Scholars and *fuqaha'* accept it. Imam Malik agreed with Abu Hanifa on this matter. 'Umar ibn Hammad ibn Abi Hanifa said, "I met Malik ibn Anas and stayed with him and listened to

his knowledge. When I had got what I wanted and desired to depart, I told him, 'I fear that you will have hostile and envious people telling you things about Abu Hanifa which do not tally with his true position. I want to make his position clear to you. If you are pleased with it, that is it. If you have something better, I will learn it.' 'Go ahead,' he replied. I said, 'He does not consider a believer to be an unbeliever on account of committing a sin.' He said, 'He did well,' or 'He was correct.' I said, 'He said more than that. He used to say, "Even if he commits atrocious actions, I do not consider him an unbeliever."' He said, 'He was correct.' I went on, 'He says more.' 'What is that?' he asked, 'He said, "Even if he kills a man deliberately, I do not consider him an unbeliever."' He said, 'He was correct.' I said, 'This is his position. If someone tells you otherwise, do not believe him.'" (al-Makki, pt. 2, p. 77)

Some people misconstrued his position and he explained this in *al-Fiqh al-Akbar*: "We do not say that sins do not harm the believer nor do we say that he will not enter the Fire. We do say that he will not be in it for eternity, even if he is a deviant, provided he leaves this world a believer. We do not say that his good deeds are accepted and his evil ones forgiven as the Murji'ites sayÉ He is subject to the will of Him who will punish him in the Fire if He wills and forgive him if He wills."

We can state that the disagreement regarding people who commit major sins has three branches. One are those groups who do not consider them believers at all – the Kharijites and Mu'tazilites. The second are those who say that disobedience is not harmful when there is belief and that Allah forgives all sins – the blameworthy Murji'ites. The third are the majority of scholars who say that a rebel is not an unbeliever and that a good action is multiplied ten times and that an evil deed is only counted as one, and that the pardon of Allah is not limited or confined. Abu Hanifa was one of these; and it is the opinion of the majority of Muslims, which would make the majority of Muslims Murji'ites by this definition. The term Murji'ites, however, is normally confined to the second group.

Qadar and a man's actions

Abu Hanifa was very perceptive and that is why he refused to become involved with the topic of *qadar* and encouraged his companions to follow the same course. When Yusuf ibn Khalid as-Samti came to him from Basra, Abu Hanifa said to him about the question of *qadar*, "This is a question which is difficult for people. How should they be capable of understanding it? It is a lock whose key is lost. If the key is found, what is in it will be known. It is only opened when someone is informed by Allah."

When the Qadarites came to argue with him about *qadar*, he said, "Do you not know that someone who looks into *qadar* is like someone who looks into the rays of the sun: the more he looks, the more his confusion increases. But you do not stop at this point. You carry on until you equate the decree and justice. How is it that Allah decrees all things and they happen according to His decree and yet people reckon that what happens is by their own actions." They said to him, "Can any of the creatures bring about in the kingdom of Allah something he did not decree?" "No," he replied, "but there are two aspects to the decree (*qada'*): command and power. He decided for them and decreed unbelievers but did not command it, and indeed forbade it. There are two commands: the existential, which is when he commands a thing to be, and the command of Relevation."

This is an excellent, precise distinction by Abu Hanifa. He separated the decree from *qadar* and made the decree what Allah had ruled which is brought by Divine Revelation and *qadar* what His power makes occur. He decreed what would be from before time. Responsibility is according to Revelation while actions occur according to the decree before time. The command has two categories: bringing into existence and imposing obligation. The second category has a reward in the Next World.

The History of Baghdad reports that Abu Yusuf said: "I heard Abu Hanifa say, 'When you speak to the Qadarite, there are two possibilities: either he is silent or he disbelieves.' He was asked, 'Did Allah know in His prior knowledge that these things would be as they are?' He said, 'Someone who responds to such a quetion has disbelieved. If he says, "Yes," is it that He wills that it be as He knows or did He will it to be different from what He knows?' If he says, "He wants it to be as He knows," then he avers that He desires belief from the believer and disbelief from the unbeliever. If he says, "He wants it to be different from what He knows," he makes the Lord unable to achieve what He wants because He desires the existence of that which He knows will not be. A person who affirms that is an unbeliever.'"

In summary, Abu Hanifa used to deal with this question in a restrained way. He believed in the decree of good and evil and the comprehensiveness of Allah's knowledge, will and power in created beings. None of a person's actions are independent of Allah's will even though man's acts of obedience and disobedience are

ascribed to him and he has choice and will in respect of them. He will be questioned and accountable for them. He will not be wronged the weight of an atom. This is the Qur'anic dogma which is derived from Book. He debated with the Qadarites to cut them off.

Abu Hanifa did not accept the opinion of the Jahmites who espoused the theory of predetermination and said that a man's actions involve no will, even if he feels and senses will. Further-more, we find that those who tried to attack him constantly claimed that he was a Jahmite. They forged lies and claimed that he venerated al-Jahm and followed him even though Abu Yusuf related that he said, "Two types of evil people are in Khorasan: the Jahmites and the anthropomorphists."

The Createdness of the Qur'an

In the time of Abu Hanifa, people began to spread among the Muslims the idea that the Qur'an was created. They claimed that it was created even though it was the greatest miracle of the Prophet, may Allah bless him and grant him peace. The first person to state this was al-Ja'd ibn Dirham who was executed by Khalid ibn 'Abdullah, the governor of Khorasan. This opinion was also held by al-Jahm ibn Safwan. Abu Hanifa's opponents claimed that he too held this opinion and that he was twice asked to repent of it, first by Yusuf ibn 'Umar, the Umayyad governor of Iraq, and then by Ibn Abi Layla.

It is not our habit to set aside a well-founded suspicion or an opinion based on evidence, but the transmissions which are related in support of this opinion make us hesitate to accept it because they originate with his opponents and because there are other contradictory reports related by reliable transmitters which are more likely to be correct because they are in keeping with what is known about his positions on dogma. In this respect, we will mention two sources.

We read in the *History of Baghdad*: "As for the assertion that the Qur'an was created, Abu Hanifa did not espouse it." It also states, "Neither Abu Hanifa, Abu Yusuf, Zafar, or Ahmad spoke about the Qur'an. Those who spoke about it were Bishr al-Marishi and Ibn Abi Du'ad. They vilified the followers of Abu Hanifa."

According to *al-Intiqa'*, Abu Yusuf said, "A man came to the Kufa mosque one Friday to ask them about the Qur'an while Abu Hanifa was away in Makka. People disagreed about it. By Allah, I think he must have been a shaytan in human guise who came to our circle just to ask us about it. We questioned one another and could not answer. We said, 'Our shaykh is not present and we dislike to speak out before he does so. When Abu Hanifa returned, we asked him about this question and what was the answer regarding it.É His reply about it was, 'We do not say anything about it. We fear to say anything.' He later said to us, 'Do not discuss it and do not ever ask about it.'"

The opinions of Abu Hanifa on thought, ethics and society

Abu Hanifa's intellect was remarkable for his profound thinking, analysis, and ferreting out the motives and reasons for all actions and matters which he examined. He went to markets, traded, dealt with people and studied life as he studied *fiqh* and *hadith*. He debated dogma and political methods. For that reason, he had exact views regarding thought, ethics and behaviour and on how a person should behave.

Abu Hanifa thought that righteous actions must be based on sound knowledge. In his view, a good person is not just someone who does good, but someone who can differentiate between good and evil, and who aims for good, out of knowledge, and avoids evil, understanding its evil. A just person is not someone who is just without understanding injustice; a just person must recognise injustice and its consequences and justice and its results, and act with justice because of the nobility and good consequences it entails.

He took this position in *The Scholar and Student*: "Know that action follows knowledge as the limbs follow the eyes. A little action with knowledge is far more beneficial than a lot of action with ignorance. In the desert a little provision with guidance is more useful than a lot of provision without it. That is like what Allah Almighty says, *'Say: "Are they the same – those who know and do not know?" It is only people of intelligence who pay heed.'* (39:9)"

A student asked Abu Hanifa, "What is your opinion about a man described as just who does not recognise the injustice of those who oppose him and is not capable of doing so." The answer was, "When the scholar is described as just but does not recognise the injustice of those opposed to him, he is ignorant of both injustice

and justice. Know, my brother, that the most ignorant and base of all classes in my view are people like that. They are like four people who are given white garments and then are asked about their colour. One says it is red, one says it is yellow, one says it is black and the fourth says that it is white. He is asked, 'What do you say about these three: are they right or wrong?' He replies, 'I know that the garment is white, but perhaps they are speaking the truth.' That is how such people are."

Two points are evident from this. One is that righteous actions must be based on proper thought and firm knowledge. The second is that knowledge must be firm and absolute and unhesitating regarding matters of belief.

Abu Hanifa's views about people, society and the connection of the scholar to the society in which he lives are those of someone who knows the states of souls and studies them deeply, tasting both the sweet and bitter. It includes the advice which he gave to his student Yusuf ibn Khalid as-Samit:

> Know that if you harm ten people, you will have enemies, even if they are your mothers and fathers, but if you do good to ten people who are not your relatives, they will become like mothers and fathers to you. If you enter Basra and oppose its people, elevate yourself over them, vaunt your knowledge among them, and hold yourself aloof from their company, you will shun them and they will shun you; you will curse them and they will curse you; you will consider them misguided and they will think you misguided and an innovator. Ignominy will attach itself to you and us, and you will have to flee from them. This is not an option. It is not an intelligent person who is unsociable to the one who is unsociable until Allah shows him a way out.
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> When you go to Basra, the people will receive you, visit you and acknowledge your due, so put each person in his proper position. Honour the people of honour, esteem the people of knowledge and respect the shaykhs. Be kind to the young and draw near to the common people. Be courteous to the impious but keep the company of the good. Do not disregard the authorities or demean anyone. Do not fall short in your chivalry and do not disclose your secrets to anyone or trust them until you have tested them. Do not socialise with the base or the weak. Do not accustom yourself to what you disapprove of outwardly. Beware of speaking freely with fools.
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> You must have courtesy, patience, endurance, good character and forbearance. Renew your clothing regularly, have a good mount and use a lot of what is good. É Offer your food to people: a miser never prevails. You should have as your confidants those you know to be the best of people. When you discern corruption, you should immediately rectify it. When you discern righteousness, you should increase your attention to it.
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> Act on behalf of those who visit you and those who do not. Be good to those who are good to you and those who are bad to you. Adopt pardon and command the correct. Ignore what does not concern you. Leave all that will harm you. Hasten to establish people's rights. If any of your brethren is ill, visit him yourself and send your messengers. Inquire after those who are absent. If any of them holds back from you do not hold back from him.
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> Show affection to people as much as possible and greet even blameworthy peopleÉ When you meet others in a gathering or join them in a mosque and questions are discussed in a way different to your position, do not rush to disagree. If you are asked, tell the people what you know and then say, "There is another position on it which is such-and-such, and the evidence is such-and-such." If they listen to you, they will recognise your worth and the worth of what you have. If they ask, "Whose position is that?" reply, "One of the *fuqaha"*.É
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> Give everyone who frequents you some of the knowledge they are expecting. Be friendly with them and joke with them sometimes and chat with them. Love encourages people to persevere in knowledge. Feed them sometimes and fulfil their needs. Acknowledge their worth and overlook their faults. Be kind to them and tolerant of them. Do not show them annoyance or vexation. Be like one of them. É Do not burden people with what they cannot do.

This was Abu Hanifa's advice to one of his students who went to Basra to teach people there the *fiqh* of Kufa and the opinions of its shaykhs. It reveals three aspects of that venerable imam.

- It shows his character and his clinging to virtue and good character so that it became like second nature to him.
- It makes it clear that he was aware of the concerns of society and people’s character and how to deal with them in a manner designed to bring out the best in them.
- It also shows the manner in which he instructed his students and that he knew how to disseminate his knowledge and views and make them acceptable to the learner.

Chapter Five
The *Fiqh* of Abu Hanifa

This final chapter is the core of our study since Abu Hanifa's *fiqh* is the field for which he is famous. To apply oneself to the study of his *fiqh*, however, is not an easy task because Abu Hanifa did not write a book on it, and the only surviving books ascribed to him are about dogma. There is no text written by him to examine so as to ascertain exactly what his position was.

The transmission of Hanafi *fiqh*

The fact that Abu Hanifa did not write a book on *fiqh* is in keeping with the spirit of his age. Writing books only became widespread after the death of Abu Hanifa or at the end of his life when he was old. There were *mujtahids* in the time of the Companions who forbade their *fatwas* to be recorded and even forbade the *Sunna* to be written down, so that there would be no confusion between it and the Book of Allah. As time went on, however, scholars found it necessary to record the *Sunna* in order to preserve it, and so they did so and collected *fatwas* and *fiqh* as well. The Iraqis collected the *fatwas* of the Companions and the *Tabi'un*. Abu Hanifa's son, Hammad, made such a collection.

It is clear, though, that these collections were not books organised into chapters. They were more akin to private notes to which the *mujtahid* would refer and not a book for the general public. The *mujtahid* would write them down to avoid forgetting them.

Abu Hanifa's students, however, did write down his views and record them. Sometimes that would be by his dictation but they were still in the form of individual notes. Sometimes he would ask them to read what they had written and he would confirm or alter it. Most of what we have from ash-Shaybani must have come via Abu Yusuf since ash-Shaybani and other students had not been with Abu Hanifa long enough to gain such comprehensive knowledge. We read in Ibn al-Bazzazi, "From Abu 'Abdullah: I used to read Abu Hanifa's statements to him and Abu Yusuf would also insert his own statements in it. I used to try not to mention the position of Abu Yusuf along with Abu Hanifa's. One day I made a slip of the tongue and muddled them."

We read in al-Makki, "Abu Hanifa was the first to record the knowledge of this *Shari'a* which no one had done before him because the Companions and *Tabi'un* did not set down their knowledge of the *Shari'a* into topics or structured books. They relied on their strong memories and made their hearts the repositories of their knowledge. Abu Hanifa grew up after them. He saw that knowledge had become scattered and feared there would be unfortunate consequences if it were lost. The Prophet said, 'Allah Almighty will not take away knowledge by stripping it from the hearts of people. It will be taken away by the death of scholars. Ignorant leaders will remain and give *fatwas* without knowledge and be misguided and misguide.' Therefore Abu Hanifa recorded it and arranged it into topics."

By this he means the recording done by his students which may have been suggested by him. Indeed, this is probable.

The *Musnad* of Abu Hanifa

Although Abu Hanifa does not have a book on *fiqh*, scholars mention a *musnad* of *hadiths* and traditions ascribed to him. It is arranged in the order of *fiqh* and its rulings. So is this *musnad* part of what he did and did he arrange it himself or was it transmitted by his companions who received it in the way his *fiqh* was received? Did they write down what he told them in his lessons and then collect it together in chapters and publish it? It is certain that Abu Yusuf collected many of those transmissions which he called *al-Athar* and that Muhammad ash-Shaybani also collected a group which he also called *al-Athar*. Many transmissions are the same in both books.

Many scholars think that the transmissions can be correctly ascribed to Abu Hanifa. Ibn Hajar al-'Asqalani says in *Ta'jil al-Munfa'a*, "As for the *Musnad* of Abu Hanifa, he did not collect it. What is extant of the *hadiths* of Abu Hanifa is found in the *Kitab al-Athar* which Muhammad ibn al-Hasan related, and other *hadiths* of Abu Hanifa can be found in the books of Muhammad ibn al-Hasan and Abu Yusuf. Abu Muhammad al-Harithi, who lived after 300 AH, was interested in the *hadiths* of Abu Hanifa and collected them in a volume."

This would indicate that the *Musnad* ascribed to Abu Hanifa is not actually his own collection. Other scholars state the same. It seems that the traditions ascribed to Abu Hanifa are valid, but that their actual collection and ordering were done by Abu Yusuf and ash-Shaybani.

Abu Hanifa's knowledge transmitted by his students

It is clear that the only method we can use to discover the *fiqh* of Abu Hanifa is by way of his companions. We see that they wrote down the issues which they discussed with their shaykh after a specific opinion had been reached. We must, however, take note of three things:

- The writings of the companions of Abu Hanifa that have been mentioned do not preclude him having recorded his *fiqh* himself.

- The statements transmitted by his companions lack any proofs other than transmitted traditions or reports, reliance on the *fatwa* of a Companion, or the position of a *Tabi'i*. Rarely are analogy or reliance on *istihsan* mentioned, except in the books of Abu Yusuf, and he only reports them occasionally. There is no doubt that this does not take us far towards understanding the use of analogy which was so strong in Abu Hanifa's time that his opponents accused him of going too deeply into it and claimed that his analogies left the *Sunna* and exceeded the scope of the Muslim *mujtahid*.

  When we read the books of ash-Shaybani, we only rarely find an analogy in which the underlying reason is clarified so that we know how it was deduced and pursued. Also, where is the *istihsan* of Abu Hanifa which his students could not dispute because of his profound perception and insight? We have no evidence that the later form of deduction was the same method of thought as that followed by Abu Hanifa.

- Abu Hanifa's companions served his school by transmitting its teachings clearly to following generations and their concern made Abu Hanifa respected. Each of those companions was an imam in his own right. Abu Yusuf was a respected and important imam. He was the Chief *Qadi* of the government for a long time. Muhammad ash-Shaybani was an imam like Abu Yusuf in both *fiqh* of opinion and *fiqh* of *hadith*. He also related the *Muwatta'* of Malik as he related the *fiqh* of Iraq and he knew both.

We have no option but to take Abu Hanifa's *fiqh* from those who accompanied him and so we should briefly mention those of them who transmitted his *fiqh*. Abu Hanifa had many students. Some travelled to him and stayed for a time and then returned home after learning his method and technique. Others remained with him. More than once, he mentioned the companions who remained with him: "They are thirty-six men: twenty-eight are fit to be *qadis*; six are able to give *fatwa*; and two – Abu Yusuf and Zafar – are fit to teach the *qadis* and those who give *fatwa*." For Abu Hanifa to make such a statement, these students must have already been mature. Because of his age, this would exclude ash-Shaybani, although he is in fact the major source for the transmission of the *fiqh* of Abu Hanifa to subsequent generations.

We will take a brief look at some of the companions who were responsible for recording the *fiqh* of Abu Hanifa, whether they were with him for a long time or whether, like Muhammad ibn al-Hasan ash-Shaybani, they were not. The criterion is whether they play an important role in the transmission of his *fiqh*.

Abu Yusuf

He is Ya'qub ibn Ibrahim ibn Habib al-Ansari al-Kufi. He was an Arab and not a client. He was born in 133 AH and died in 182. He grew up poor and in need and had to work to eat. Fervour for knowledge moved him to listen to scholars until Abu Hanifa noticed him and helped him financially. After that he devoted

himself to knowledge entirely. He had been with Ibn Abi Layla before joining Abu Hanifa to whom he then devoted himself. It seems that after Abu Hanifa's death, or while he was still alive, he also studied with *hadith* scholars.

He was *qadi* under three khalifs: al-Mahdi, al-Hadi and then ar-Rashid. Coupled with the fact that he was one of the *fuqaha'* of opinion, his appointment as *qadi* was one of the reasons why some *hadith* scholars have avoided his *hadiths*. The Hanafi school benefited in several ways by the appointment of Abu Yusuf as *qadi* since his selection gave the school influence. A *qadi* deals with people's problems and has to apply himself to solving them and thus the analogy and *istihsan* he used was derived from everyday life not theoretical situations. Through his appointment, the Hanafi school was put on a firm footing. Abu Yusuf may have been the first of the *fuqaha'* of opinion to base opinions on *hadith* for he combined both disciplines.

The books of Abu Yusuf

Abu Yusuf wrote many books containing his opinions and those of his shaykh. *The Index* of Ibn an-Nadim mentions a number of them, most of which have not survived. There are also a number of books which Ibn an-Nadim does not mention, one of which is the *Kitab al-Athar* and books on differences with other *fuqaha'*.

His best known book is the *Kitab al-Kharaj*, a treatise which Abu Yusuf wrote for ar-Rashid on the financial matters of the state. He clarified the sources of financial revenue for the state and the areas of taxation in great detail, basing himself on the Qur'an, transmission from the Prophet, and the *fatwas* of the Companions. He quotes *hadiths* and deduces their underlying intentions and the actions of the Companions.

This book was entirely written by Abu Yusuf, but in it he mentioned his disagreement with Abu Hanifa regarding several questions. Is it reasonable to conclude that he agrees with Abu Hanifa when he does not mention that they disagree? This would seem to be the case. When he differs, he produces the method of reasoning involved in his reaching a separate conclusion.

The *Kitab al-Athar* is transmitted by him from Abu Hanifa and contains a number of *fatwas* which Abu Hanifa selected or opposed from the positions prevalent in Kufa at that time. This book has several important scholarly implications for us:

- Its ascription to Abu Hanifa shows a group of his transmissions and the type of *hadiths* on which he relied in his deduction of rulings and *fatwas*.

- It makes it clear that Abu Hanifa accepted the *fatwas* of the Companions and how he accepted and used *mursal hadiths*.

- It includes some of what he selected of the *fatwas* of the *Tabi'un* among the *fuqaha'* of Kufa and of Iraq in general. It, therefore, provides a legal collection which was known and studied in Iraq.

Another significant book was *The Disagreement of Abu Hanifa and Ibn Abi Layla*: It contains the questions on which there was disagreement between the two. AbuYusuf supports Abu Hanifa although both of them had been his teachers. As-Sarakhshi says about Abu Yusuf's move:

> "Abu Yusuf used at first to go to Ibn Abi Layla and studied with him for nine years. Then he moved to the gathering of Abu Hanifa. It is said that the reason for Abu Yusuf's move was that he attended a marriage contract and sweets were distributed. Abu Yusuf had some and Ibn Abi Layla disliked that and spoke harshly to him, saying, 'Do you not know that this is not lawful?' So Abu Yusuf went to Abu Hanifa and asked him about that and he said, 'There is nothing wrong with it. We have heard that the Messenger of Allah was with his Companions at the marriage contract of an Ansari and dates were distributed and the Prophet began to pick them up and tell his Compan-ions, "Take". We also heard that during the Farewell *Hajj* when the Messenger of Allah sacrificed a hundred camels, he ordered that a piece of each camel be kept for him.' When the disparity between them was clear, Abu Yusuf moved to Abu Hanifa."

We find this transmitted from ash-Shaybani. The book also shows how Abu Hanifa utilised analogy in Iraqi *fiqh*. Abu Yusuf's book illustrates the use of evidence and different aspects of analogy. It also shows the

disagreement between the people of Madina and the people of Iraq. An example of that is the share a horse receives from the booty.

Abu Hanifa said that a man with two horses only receives a share for one horse. Al-Awza'i said that he receives the share for two horses and no further share and that this is what the people of knowledge say and the statement according to which scholars act. Abu Yusuf said, "Nothing about shares for two horses has reached us from the Prophet or any of his Companions except for one *hadith*. We consider a single *hadith* to be anomalous and do not take it as evidence. As for the statement that the Imams act by it and the people of knowledge follow it, this is like the statement of the people of the Hijaz, "And that is the past *sunna*." This is not an acceptable position to adopt. Who is the Imam who does this and who is the scholar who accepts it? We must look to see whether he is worthy to be transmitted from and certain about whether his position is based on knowledge or not. How can there be shares for two horses and not for three? How can there be a share for a horse tethered at camp which is not used in the fighting?"

Muhammad ibn al-Hasan ash-Shaybani

His *kunya* was Abu 'Abdullah. He was a client. He was born in 132 and died in 189 AH. He was only about eighteen years old when Abu Hanifa died and had not been with him for a long time, but nonetheless he compiled a more complete study of the *fiqh* of Iraq than Abu Yusuf. He took from ath-Thawri and al-Awza'i, and travelled to Malik and learned the *fiqh* of *hadith*, transmissions and the opinions of Malik, after having learned *fiqh* of opinion from the Iraqis. He stayed with Malik for three years. He was appointed a *qadi* under ar-Rashid but was never Chief *Qadi*. He had great skill in letters and so he had both linguistic training and analytic perception. He was concerned with his appearance so that ash-Shafi'i said about him, "Muhammad ibn al-Hasan fills both the eye and the heart." He also mentioned his great eloquence.

Muhammad ibn al-Hasan achieved what no other companion of Abu Hanifa did, except Abu Yusuf – he learned the *fiqh* of Iraq completely and then was appointed *qadi*. He studied with Abu Yusuf and then, as we have mentioned, he also learned the *fiqh* of the Hijaz from Malik and the *fiqh* of Syria from the shaykh of Syria, al-Awza'i. He also had skill in calculating the distribution of inheritance. He was inclined to record things and he is truly considered to be the transmitter of the *fiqh* of the Iraqis to posterity. As we mentioned, not only did he transmit the *fiqh* of Iraq, but he also transmitted the *Muwatta'* of Malik.

Ash-Shaybani's position among the Iraqis came from him being a leading *mujtahid* who had valuable legal opinions. He did not relate *fiqh* directly from Abu Hanifa but by way of Abu Yusuf and others. He mentions his transmission from Abu Yusuf. Indeed, the entirety of *al-Jami' as-Saghir* is transmitted from Abu Yusuf. The one book which he did not review with Abu Yusuf was *al-Jami' al-Kabir*.

The books of ash-Shaybani form the primary source for Abu Hanifa's *fiqh,* whether it be what he transmits from Abu Yusuf or what he records of the *fiqh* known in Iraq. Not all of ash-Shaybani's books possess the same degree of reliability. Scholars divide them in two. Some are clear in transmission, like *al-Mabsut, az-Ziyadat*, *al-Jami' as-Saghir*, as-*Siyar as-Saghir*, *as-Siyar al-Kabir* and *al-Jami' al-Kabir*. The ascription of others is not as certain. The first group are the bedrock of the transmission of Hanafi *fiqh*.

Al-Mabsut or *al-Asl,* as it is sometimes known, is the longest of his books in which he collected questions on matters which Abu Hanifa gave *fatwa*. It contains the differences between Abu Yusuf and ash-Shaybani, when there were any, and matters on which there was no disagreement. Each chapter begins with the traditions they considered sound regarding the topic concerned and then various questions and their answers. It reports Iraqi *fiqh*, but not the legal reasoning behind it.

Al-Jami' as-Saghir contains things which ash-Shaybani related from Abu Yusuf, as is mentioned at the beginning of every chapter. Some sources state that it is the only thing which he transmitted directly from Abu Yusuf. It is arranged according to legal topics.

In the case of *al-Jami' al-Kabir*, scholars agree that it did not come from Abu Yusuf, although he knew what it contained and many of the conclusions must have been transmitted from him. It, like *as-Saghir*, lacks legal deduction and there is no evidence for the conclusions reached, although a reader may discern it by reading between the lines.

He has other books as well that clarify various rulings which reflect Iraqi *fiqh* and frequently illustrate the difference between Iraqi *fiqh* and Madinan *fiqh*. His books also include transmission of *hadiths* and later traditions which were transmitted by Abu Hanifa and the people of Iraq and which were used as sources by later Hanafi scholars.

Zafar ibn Hudhayl

He was a companion of Abu Hanifa before the other two. He died in 158 at the age of 84. His father was an Arab and his mother a Persian and he had traits of both races. He was strong in using evidence and took the *fiqh* of opinion from Abu Hanifa which dominated his work. He was most acute in analogy. There is a report in *The History of Baghdad* from al-Muzani: "A man came and asked about the people of Iraq. 'What do you say about Abu Hanifa?' 'He is their master,' was the reply. 'And Abu Yusuf?' 'He is the one among them who most follows *hadith*.' 'And Muhammad ibn al-Hasan?' 'The one with the most secondary deduction.' 'And Zafar?' 'The most acute of them in using analogy.'"

No books are transmitted from him and it is not known that he recorded the school of his shaykh, and it seems that the reason for that was that he died soon after him – only eight years later – while the other two lived for more than thirty years and had time to write. He seems to have only orally transmitted Abu Hanifa's teaching.

He was *qadi* of Basra while Abu Hanifa was alive. Ibn 'Abdu'l-Barr reports in *al-Intiqa'*: "When he was appointed *qadi* of Basra Abu Hanifa said to him, 'You know the enmity, envy and rivalry which exists between us and the Basrans. I do not think that you will be safe from them.' When he went to Basra as *qadi*, the people of knowledge gathered round him and began to debate with him about *fiqh* day after day. When he saw that they accepted his arguments, he told them, 'This is the position of Abu Hanifa.' They said, 'Does Abu Hanifa find this good?' 'Yes,' he replied. He continued in this vein until they accepted Zafar completely and had transformed their hatred into love."

He took Abu Hanifa's place in his circle after he died and Abu Yusuf took it after him.

Several other *fuqaha'* of the Hanafi school are considered to have transmitted the opinions of Abu Hanifa. Among them was al-Hasan ibn Ziyad al-Lu'lu'i (d. 204) who is said to have been a student of Abu Hanifa. He became *qadi* of Kufa in 194.

The place of Abu Hanifa's *fiqh* in relation to earlier *fiqh*

We want to examine the principles on which Abu Hanifa based his deduction and which were the source of his *fiqh* and to relate it to a topic which some other writers have broached – the place of Hanafi *fiqh* in relation to the *fiqh* which preceded it. Did he innovate the method he followed? Did his *fiqh* cover an area not previously dealt with or did he simply follow a course plotted by others before him so that he did not bring anything new? Did Abu Hanifa complete a process which began in Iraq and culminated with him? These are the three possibilities and Abu Hanifa must fall into one of them.

His partisans state that he instigated a totally new way of legal thinking based on the Book, *Sunna* and sound tradition from the Companions but such claims are unsupported. Opposing them are those who claim that Abu Hanifa was merely a follower and brought nothing new, except in respect of extrapolation and speed of derivation, and that the source of the method which he followed was Ibrahim an-Nahka'i. One such person is Shah Waliyullah ad-Dihlawi who states, "Abu Hanifa, may Allah be pleased with him, was the strongest proponent of the school of Ibrahim and his contemporaries. He did not go beyond it except as Allah willed. He extrapolated according to Ibrahim's school." He concludes that Abu Hanifa did not bring any new ideas but was merely a follower and transmitter of an-Nakha'i.

There is no doubt that this is an attack on the position of Abu Hanifa in *fiqh* because it makes him an imitator, or a followed imitator, not the master of a school of *ijtihad*. If, however, Abu Hanifa had been like this, he would not have had such an effect on subsequent generations. Furthermore, we also find that Abu Hanifa transmits many traditions from other sources than Ibrahim. An illustration of this is found in the *Kitab al-Athar* by ash-Shaybani where it is reported from Ibn 'Abbas that if someone on *hajj* has intercourse after standing at 'Arafat but before his *tawaf*, he owes a camel, completes the *hajj*, and his *hajj* is complete. Then he reports from Ibrahim that if he has intercourse before or after 'Arafat and before *tawaf*, he owes a sheep, completes the *hajj* and must perform *hajj* again the following year.

Ash-Shaybani says, "The correct position is what Ibn 'Abbas said. The school of Abu Hanifa is as the books of the school state: intercourse before standing at 'Arafat invalidates the *hajj*, but it does not invalidate

it after the standing, which is the opinion of Ibn 'Abbas." From this it is clear that Abu Hanifa completely abandoned Ibrahim's opinion and accepted that of Ibn 'Abbas which was related by 'Ata'. This is part of the *fiqh* of Makka, not Kufa. So he left Ibrahim and Kufa. How can this be blind imitation of Ibrahim or the people of Kufa? Such exceptions are often seen in the traditions of Abu Yusuf.

The truth is that Abu Hanifa came onto the scene when Iraqi *fiqh* was mature but he did not confine himself to what he found there. He followed a path which another had begun and went to the end of the road. We are not partisan here and take a middle course in this matter. There is no doubt that the opinions of Ibrahim an-Nakha'i had a tremendous effect on the formation of the legal reasoning of Abu Hanifa and that this was his starting point in *fiqh*, but that does not mean that Abu Hanifa did not take from anyone else or pursue any other paths. It seems that Abu Hanifa began his legal studies with what his shaykh Hammad reported of Ibrahim's *fiqh*. Then he completed his studies with others and deduced using analogy and evidence from the moment he took Hammad's place in his circle until his death, a period of about thirty years.

Whatever the position of Abu Hanifa in relation to Ibrahim, there is no doubt that Abu Hanifa and Ibrahim were the two eminent personalities in the formation of Iraqi *fiqh* and that their legal reasoning was so close that it led scholars to make that claim and make the personality of the latter vanish into the former. It is a false assertion because unity in thinking is not like unity in opinion. Abu Hanifa was not an imitator. He clearly stated that he used *ijtihad* as Ibrahim had done.

Ibrahim, as the *faqih* of Iraq, had an initial influence on Abu Hanifa who then formulated his own *fiqh*. Common factors in their manner of legal reasoning can be discerned. Both of them turned to analysis of *hadith* to extract the meaning as will become clear when we examine Abu Hanifa's reliance on *hadith*. Both interpreted *hadiths* in a legal manner to deduce the reasons for the rulings in them in order to then extend them through analogy to other matters. Ibrahim used *mursal hadiths* and Abu Hanifa also accepted *mursal hadiths* and used them as evidence.

But in spite of this agreement in legal reasoning we find that they differ in two important matters. One is that Abu Hanifa used a lot of the *fiqh* of Makka and Madina as the *musnad* of his *hadiths* indicate. The second is that Abu Hanifa used a lot of ramification and hypothetical cases and did not confine himself only to what he was asked about. He used to hypothesise problems and clarify their ruling and evidence. We will deal with Abu Hanifa's position in respect of this.

Abu Hanifa and hypothetical *fiqh*

By hypothetical *fiqh* we mean the giving of *fatwas* about situations which have not actually occurred but are only imagined. The people of analogy and opinion did this a lot. In the course of deducing the reasons behind rulings established by the Book and *Sunna*, they had to theorise situations in order to ascertain the causes for the rulings and apply them. Abu Hanifa frequently used this method since he used analogy a great deal and derived the causes from the texts and their contexts. Some claim that he devised 60,000 such hypotheses, others 30,000. The last number is more likely.

The History of Baghdad reports that when Qatada came to Kufa, Abu Hanifa went to him and asked him, "Abu'l-Khattab, what do you say about a man who is absent from his family for years so that his wife thinks that he has died and remarries but then the first husband returns: what do you say about her dowry?" He had told his companions who had gathered, "If he relates a *hadith* he will be lying. If he speaks by his own opinion he will err." Qatada exclaimed, "Bother you! Has this occurred?" "No," he replied. He said, "Why do you ask me about something that has not happened?" Abu Hanifa replied, "We prepare for affliction before it occurs. When it occurs, we will know what to do it and how to get out of it." (pt. 12, p. 348)

Abu Hanifa's leaning toward hypothesis and theorising was due to his profound grasp of the texts and his acting according to the consequences of the meaning and applying the ruling to all situations with similar root causes. Al-Hajawi claims that Abu Hanifa is the one who originated hypothetical *fiqh*. He said, "*Fiqh* in the time of the Prophet was confined to explicit rulings about what had actually occurred. After him, the Companions and great and minor *Tabi'un* used to clarify the rulings regarding what occurred in their time while preserving the rulings for what had occurred before them and thus *fiqh* increased in its branches. Abu Hanifa is the one who unleashed theoretical questions, hypothesising situations that might occur and what their rulings would be, either by analogy based on what had occurred or by extracting general principles. So *fiqh* developed and grew." (*al-Fikr as-Sami*, pt. 2, p. 107)

In fact, Abu Hanifa did not originate this method but he promoted and expanded it and added more branches and different forms of deduction. It originated before him from the circles of the *fuqaha'* of opinion. *Fuqaha'* after him continued to do the same although there was disagreement about its permissibility.

The fundamental principles on which Abu Hanifa based his *fiqh*

Abu Hanifa subjected questions to extensive ramification and close study, which inevitably led to hypothesising situations which had not occurred but which might occur, in order to clarify what their rulings would be. The books of ash-Shaybani are full of secondary questions transmitted from him. If we study them and analyse them in detail, we see that they must have been based on particular principles and that there must have been a basis for the rules of deduction used to extrapolate the rulings derived. History does not provide us with an exposition of these rules in detail connected to Abu Hanifa himself. However, there is no doubt that there are rules which Abu Hanifa used as a basis for his deductions and extrapolation.

We find such principles detailed in the books of the later people who forward them as the principles of deduction used in the Hanafi school and mention the differences between the Imams of that school on these principles and state: "This principle is the opinion of Abu Hanifa and that is the opinion of his companions and that is the opinion of all of them," and so forth.

Since the principles normally mentioned by writers are deduced by later writers and not mentioned by the Imams or their students, three points must be made.

- No detailed principles for the rulings of Abu Hanifa were related from him, although he must have had principles which he used in his reasoning, even if he did not write them down, just as he did not write down secondary rulings.
- The scholars who deduced the recorded principles, like al-Bazdawi and others, used to look for them in the statements of the Imams and the secondary rulings transmitted from them when they ascribed the principles to them. There are two categories: those ascribed to the Imam as the principles which they observed in deduction and the opinions of the *fuqaha'* of the Hanafi school.
- Although detailed rules are not transmitted from Abu Hanifa for deduction, general rules for deduction are reported.

Abu Hanifa and legal evidence

As we read in *The History of Baghdad*. Abu Hanifa said, "When I do not find the ruling in the Book of Allah or the *Sunna* of the Messenger of Allah I can then take the statement of his Companions if I wish and leave those of other people. But I do not disregard their words for the words of anyone else. But when it is a question of Ibrahim an-Nakha'i, ash-Sha'bi, al-Hasan, Ibn Sirin, or Sa'id ibn al-Musayyab, then I can exercise *ijtihad* in the same way that they did."

Al-Makki states in *The Virtues*: "Abu Hanifa took what was reliable, avoided the unseemly, and investigated people's behaviour and what was correct for them and was in their best interests. He used analogy for matters but, if analogy led to something unseemly, he used *istihsan* if it was appropriate. If it was not appropriate, he referred to what the Muslims generally did. He used to attach himself to a known *hadith* on which people were agreed and then form an analogy if that was possible. He would then use *istihsan* and take whichever of them was more correct. Sahl said, 'This knowledge of Abu Hanifa is, in fact, the knowledge of the common people.'"

He also says, "Abu Hanifa investigated which *hadiths* were abrogating and which abrogated and acted according to the *hadith* when he considered it established from the Prophet via his Companions. He knew the *hadiths* of the people of Kufa and was strong in following what he found in his land."

From these sources, we can see that the order of legal evidence used by Abu Hanifa was the Book, then the Sunna, then the statements of the Companions, then consensus, then analogy, then *istihsan* and lastly custom. We will now have a brief look at these sources.

The Book

Fuqaha' in the Hanafi school reflected on whether the Qur'an constituted text and meaning or meaning alone. Most scholars agree that the Qur'an constitutes text and meaning and it is important, at this point, to ascertain what Abu Hanifa's opinion about it was. There is no definitive text by Abu Hanifa making that clear but there are secondary sources which point to a conclusion.

One thing indicating his view is the fact that he allowed recitation of the Qur'an in the prayer in Persian and considered the person to have in that case fulfilled the obligation of recitation, whether or not he was able to recite in Arabic, even though he disliked him doing it if he was capable of reciting in Arabic. Abu Yusuf and Muhammad ash-Shaybani said, "Recitation in other than Arabic is only accepted in the case of inability to recite in Arabic." Ash-Shafi'i said, "It is not allowed in other than Arabic even if someone is unable. In such a case a person must call on Allah with what he knows and glorify Him." Al-Bazdawi reports from Nuh ibn Abi Maryam that Abu Hanifa retracted that position. It states in the *Kashf al-Asrar*, "He returned to the common position."

We must not forget the time in which Abu Hanifa lived, fifty years of which was under the Umayyads. He encountered Persians when they became Muslim in droves and their tongues made mistakes in Arabic and did not pronounce it well and many did not understand it well. He saw the *ayats* of the Qur'an being badly mispronounced and so he thought that as an allowance the non-Arab should be permitted to recite the meanings of *ayats* which were not subject to interpretation in a translated form. Then Abu Hanifa modified his position, only permitting the recitation of the Qur'an in translation for someone who was unable to recite it in Arabic.

The Qur'an contains the totality of the *Shari'a* and in it are defined general rules and those rulings which will not change over the course of time. Thus it contains the eternal and universal *Shari'a* for all mankind. The *Sunna* of the Prophet derives its strength from it and clarifies what needs to be clarified in it and provides necessary detail. Hence the Qur'an and the *Sunna* are inseparable as the basis of the *Shari'a.* Scholars studied its composition and expressions and clarified the rulings it indicated and the strengthen of its evidence

One area of Qur'anic evidence worth mentioning is the force of the *'amm* in the Hanafi school. *'Amm* (general) can be defined as a word which indicates various things with a shared meaning, for instance, as 'human being' indicates man, woman, black, white, Zayd, Bakr and Khalid while *khass* (particular) applies to a specific aspect of what is alluded to by a general expression, like 'white'or 'man' in relation to 'human being'. The Hanafis hold that, like the *khass*, the *'amm* is definitive in its evidence and can abrogate the *khass*, whether it occurs in the Qur'an or the *Sunna*. Al-Bazdawi mentioned that this was the view of Abu Hanifa. Accordingly, a particular solitary *hadith* will not alter the general meaning of the text.

Some *ayats* of the Qur'an connected to judgements require further clarification. They require some more details, or there is something implicit in them which requires explanation, or they are unrestricted and need to be qualified. Scholars – both *fuqaha'* of opinion and *fuqaha'* of tradition – agree that this is what the *Sunna* often does with respect to the Qur'an. Therefore the *fuqaha'* who expounded the principles of the school of Abu Hanifa and its adherents undertook to clarify the Noble Qur'an. The manner in which the *Sunna* clarifies the Qur'an is divided into three categories.

- Clarification by confirmation. This is when the *Sunna* reinforces the meaning of an *ayat*.
- Clarification by explanation. This is when the *Sunna* clarifies something implicit in an *ayat* when the text is general. This would include such things explaining details of the prayer, *zakat* and *hajj*, or defining the minimum amount of theft which entails cutting off the hand.
- Clarification by supersession, which is abrogation. Abro-gation of the Qur'an by the Qur'an is permitted by the Hanafis, as is abrogation of the Qur'an by the *Sunna,* if it is confirmed by multiple transmission or well-known transmission.

The *Sunna*

This is the second source on which Abu Hanifa relied in his deduction. It is ranked after the Book because the Book is the foundation, root and primary source of the *Shari'a*, while it is clear that the *Sunna* is one of its secondary sources, coming after it in consideration. It elucidates the Book and what elucidates comes after what is elucidated and serves it. Many traditions report that the *Sunna* is the second source of deduction and we see this in the *hadith* of Mu'adh when the Prophet sent him to Yemen and asked him, "By what will you judge?" He replied, "By the Book of Allah." He asked, "And if you cannot find it?" "By the *Sunna* of the Messenger of Allah," he replied. He asked, "And if you do not find it there?" He replied, "Then I will exercise my opinion."

'Umar wrote to Shurayh the Qadi, "When a case comes before you, judge by what is in the Book. If something not in the Book of Allah comes to you, then judge by what is in the *Sunna* of the Messenger of Allah." Similar things are related from other Companions.

This is confirmed in what is transmitted from Abu Hanifa. He clearly stated the same We also find that the Hanafis differentiate between a matter established by the Qur'an when the evidence is definitive and a matter established by a confirmed *sunna*. Those commands established by Qur'an are obligatory (*fard*) and what is established in the *Sunna* is mandatory (*wujub*). It is the same with prohibitions. Anything forbidden by the Qur'an is *haram,* if there is no uncertainty in the evidence, and anything forbidden by a confirmed *sunna* is *makruh* (disliked), but *makruh* in a prohibitive way, whatever the evidence. This is a slightly lesser rank.

There was conflict between the *fuqaha'* regarding the amount on which Abu Hanifa relied on the *Sunna* in his legal reasoning, so that some of them went so far as to claim that he advanced analogy before the *Sunna*. This requires some examination. Abu Hanifa was accused by his opponents, even during his lifetime, of clashing with the *Sunna*. Abu Hanifa himself denied this accusation. He stated, "By Allah, it is a lie about us if someone says that we advance analogy over a text. Is there any need for analogy when a text exists?" (*al-Mizan*, ash-Sha'rani)

So he only used analogy when there was strong need for it. He used to say, "We only use analogy when there is strong need for it. We look for evidence about the question in the Book, the *Sunna* and the decisions of the Companions. If we do not find anything then we use analogy since there is silence about the matter." (*al-Mizan*, ash-Sha'rani) He also said, "We first take the Book, then the *Sunna*, then the decisions of the Companions, and we do what they agree about. If they differ, we use analogy by comparing one ruling with another when they have the same underlying cause so that the meaning is clear." (*al-Mizan*, ash-Sha'rani, p. 52) He also said, "We act first by the Book of Allah, then by the *Sunna* of the Messenger of Allah and then by the *hadiths* of Abu Bakr, 'Umar, 'Uthman and 'Ali." (*al-Mizan*, ash-Sha'rani, p. 52)

It is reported that al-Mansur wrote to him, "I have heard that you advance analogy over *hadith*." Abu Hanifa wrote back, "The matter is not as you have heard, Amir al-Mu'minin. I act first by the Book of Allah, then by the *Sunna* of the Messenger of Allah, and then by the decisions of Abu Bakr, 'Umar, 'Uthman and 'Ali, and then by the decisions of the other Companions, and then, if they differ, I use analogy." These are clear statements from Imam Abu Hanifa in which he strenuously refutes those allegations about preferring analogy over the *hadith*.

Abu Hanifa was one of the first *fuqaha'* to accept single *hadiths* as evidence and to formulate his views according to them if he found a *hadith* which contradicted his opinion. We have mentioned how he retracted his view about the safe-conduct of the slave on the strength of the *fatwa* of 'Umar which was related to him by a single source. Since he did that with the decision of a Companion, he is far more likely to have done so with the *hadiths* of the Prophet. This can be seen in the books of Abu Yusuf and ash-Shaybani.

Although it is evident that Abu Hanifa accepted the single report, there is disagreement about his position when single reports contradicted analogy. Did he reject the single report which clashed with analogy and consider the contradiction to be a flaw in the *hadith,* or did he accept the *hadith* and ignore the analogy because there is no analogy when there is a text?

Ibn 'Abdu'l-Barr says, "Many of the people of *hadith* attack Abu Hanifa for rejecting a lot of single *hadiths* since his method of dealing with them was to compare them with what he had collected of *hadiths* and meanings of the Qur'an. If it deviated from that corpus, he rejected it." However, according to al-Bazdawi, if the tradition came from a well-known Companion, famous for his *fiqh* and insight, like the four Rashidun khalifs, it was preferred over analogy. If the source was someone not known for his *fiqh*, then it was considered in the light of analogy and accepted or ignored.

Abu Hanifa and the evidentiary status of *mursal hadiths*

A *mursal hadith* is one where the *Tabi'i* who relates it fails to mention the Companion who transmitted the *hadith* to him, saying, "The Messenger of Allah saidÉ" without making it clear how the *hadith* reached him. Al-Bazdawi used a wider definition of *mursal* and said that it is any *hadith* in which the *isnad* to the Prophet is not mentioned, and so it includes *hadiths* which a Companion did not hear directly from the Prophet, the *mursal* of the *Tabi'i* or of any reliable person at any time. The Hanafis say that a *mursal hadith* is accepted from the Companions, *Tabi'un* and the third generation, but not from those after them.

Examination of the sources shows that Abu Hanifa used to accept *mursal hadiths* from the first three generations, but not necessarily subsequent ones. We see that Abu Hanifa accepted *mursal hadiths* from those he knew and whose method he preferred and trusted. Ibrahim an-Nakha'i was the shaykh of his shaykh and he preferred his path, whether his *fiqh* differed or agreed with his own opinion. In both cases, he was reliable and his transmissions were not doubted. Al-Hasan al-Basri enjoyed a comparable reliability. Abu Hanifa accepted his *mursal hadiths* and those which came from anyone who had a position of equivalent reliability.

In fact, *mursal hadiths* enjoyed widespread acceptance in Abu Hanifa's time. This was before there was a great deal of forgery of *hadiths* so that scholars came to require *isnads* to ensure authenticity. We see that Imam Malik in the Hijaz also accepted *mursal hadiths*.

Fatwas of the Companions

We have mentioned that Abu Hanifa said that he acted by the decisions of the Companions in the absence of a text from the Book or *Sunna*. If there were differing opinions among the Companions, he chose from among their views, taking the position of whomever of them he wished, and he did not abandon their position for anyone else. When it came to the generation of the *Tabi'un*, like Ibrahim an-Nakha'i, Ibn Sirin, Sa'id ibn al-Musayyab and others, he exercised *ijtihad* as they had done. He did not follow the opinion of a *Tabi'i* or imitate him as he did in the case of the Companions.

Abu Hanifa used to differ from the Companions on matters in which there was scope for opinion. On matters in which there was no scope for opinion and where there was firm transmission, he followed them. That is why he took the period of menstruation to be a minimum of three and a maximum of ten days based on the position of Anas and 'Uthman ibn Abi'l-'As. He considered things such as this to be a matter of oral transmission not *ijtihad*.

In brief, Abu Hanifa put the position of the Companions before analogy and this can be seen in many of his rulings. Some later Hanafis did the reverse, preferring opinion to the statement of a Companion. Abu Hanifa did not consider that it was mandatory to follow the *fatwas* of the *Tabi'un*.

Consensus

The definition on which most scholars who accept consensus as a principle of Muslim *fiqh* agree is that it denotes the agreement of the *mujtahids* of the Muslim Community on any matter at the time of ruling. This is the soundest definition and it is that which the majority of scholars prefer. It is the one which ash-Shafi'i mentions in his *Risala* and he was the first to define its meaning and explain how it is used as evidence and to give it its weight in Islamic *fiqh*.

Did Abu Hanifa also consider consensus as one of the principles of his *fiqh* on which he based his *ijtihad*? Scholars of the Hanafi school state that it is one of his principles. They state that Abu Hanifa and his companions used to accept tacit consensus and thought that opposition to such consensus was only valid if scholars had two different opinions on a matter.

We find two instances in the sources where this principle is mentioned. One is in *The Virtues* of al-Makki when he says: "Abu Hanifa was tenacious in following what the people in his land agreed upon." (pt. 1, p. 98) The second is what Sahl ibn Muzaham said: "Abu Hanifa took what was reliable and fled from the unseemly. He examined people's behaviour and what they based themselves on and what was in their best interests." (pt. 1, p.82)

These two transmissions from his contemporaries clarify that among his principles was that he followed what the *fuqaha'* of his land agreed on. In matters about which there was no text, he proceeded in accordance

with the behaviour of the people. This makes it clear, without a doubt, that he accepted the consensus of the *mujtahids* in general and was strong in following that. It appears that the consensus which counts as evidence with the *fuqaha'* has three pillars:

- The Companions sometimes exercised *ijtihad* regarding questions which were presented to them. In many cases which arose where public well-being was concerned, 'Umar would consult them and opinions would be exchanged. When they agreed, that would be his policy. If they differed, they argued until they reached something on which they agreed.
- In the era of *ijtihad*, every Imam used to strive not to have divergent positions contrary to those of the other *fuqaha'* of his land so that he would not be considered aberrant in his thinking. Abu Hanifa was firm in following that on which there was consensus between the earlier *fuqaha'* of Kufa. Malik, likewise, put the consensus of the people of Madina before single traditions.
- There are also traditions which confirm the evidentiary nature of consensus like the words of the Prophet, "My Community will never agree on misguidance," and "What the Muslims see as good is good in the sight of Allah."

Analogy

We have mentioned that if Abu Hanifa did not find a text in the Book, *Sunna* or *fatwas* of the Companions, he exercised *ijtihad* and opinion to ascertain the different aspects to be examined in the question under review. Sometimes he was guided by analogy and sometimes by *istihsan* – the best interests of people and lack of harm in the *deen*. He used analogy unless doing do would lead to something unseemly and not in keeping with people's behaviour, in which case he would use *istihsan*. People's behaviour was his guide in both *istihsan* and analogy.

The analogy which Abu Hanifa mostly used was defined by scholars after him in a general definition: to explain the ruling about a matter without a text by ruling it according to something whose ruling is known by the Book, *Sunna* or consensus since both matters share the same underlying cause.

Abu Hanifa's *ijtihad* and his method in understanding the *hadiths*, coupled with the environment in which he lived, made him use a lot of analogy and ramify secondary rulings accordingly, because in his *ijtihad*, Abu Hanifa did not stop at investigating the rulings of problems which had actually occurred but would extend his reasoning to rulings in respect of problems which had not occurred. He would theorise in order to be prepared for circumstances before they occurred so as to be ready to deal with them.

Thus Abu Hanifa's method in understanding texts led to using a lot of analogy since it is not enough to recognise simply what the rulings indicate. One must know the events which formed the context of the text and how it was intended to benefit people and the reasons behind it, as well as any peculiarities which might affect the rulings. It is only on this basis that analogy can be correct.

He used to ascertain the circumstances in which an *ayat* had been revealed. He studied those questions whose legal reasons were mentioned in *hadith* until he was considered the best of those who explain *hadiths,* because he did not confine himself to the outward sense but explained the intentions underlying the outward sense and what the *hadiths* indicated. The fact that there were not a great number of *hadiths* to be found in Iraq also compelled him to make more extensive use of analogy than he might otherwise have done.

Abu Hanifa divided texts into two categories: those dealing with worship in which case he did not investigate the reasons behind the rulings because analogy was of no use in them, and those dealing with matters of this world. In these texts he would attempt to infer the underlying reason which could then be applied to other cases.

Istihsan (Discretion)

Abu Hanifa used *istihsan* a lot as we have noted previously. The great amount of the use of *istihsan* by Abu Hanifa was the focus for the attack of those who criticised its worth in *fiqh*. Some fiercely attacked the use of *istihsan,* and Abu Hanifa and his followers for using it, because they regarded it as allowing a ruling to

be reached that was based on personal interpretation and feeling rather than an actual text and defined judgement.

Scholars at the time of Abu Hanifa and after him disagreed about *istihsan*. Malik, Abu Hanifa's contemporary, used to say that *istihsan* was nine-tenths of knowledge, but ash-Shafi'i, who came after them, used to say, "Anyone who uses *istihsan* has legislated for himself," and he devotes a chapter in *al-Umm* to the "invalidation of *istihsan*".

But what was the *istihsan* about which some *fuqaha'* disagree but about which there was no disagreement between the *fuqaha'* of the Hijaz and Iraq, and which Malik considered nine-tenths of knowledge but which ash-Shafi'i criticised? Hanafi *fuqaha'* have explained the *istihsan* transmitted from Abu Hanifa and laid down the rules for legal reasoning in exercising *ijtihad* which involves *istihsan*. Part of their definition is that it is clear that the *istihsan* used by Abu Hanifa did not part from the text and analogy. The *istihsan* which he used was to restrain the analogy, if allowing its general application would be contrary to public interest, concern for which was the overriding consideration of the *Shari'a*.

Fuqaha' disagree regarding the *istihsan* which Abu Hanifa and his adherents used. Some of them define it as being, "Departure from what analogy entails to a ruling which is stronger than it." This is a definition which does not embrace all forms of *istihsan*. The best definition in my view is that stated by al-Karkhi: "That the *mujtahid* depart from an established precedent in favour of another ruling for a stronger reason which necessitates turning away from the precedent." This definition embraces all forms of *istihsan*.

Custom (*'urf*)

We recall that earlier we mentioned what Sahl ibn Muzaham said about the basic principles on which Abu Hanifa based his deduction: "Abu Hanifa took what was reliable and fled from the unseemly. He examined people's behaviour and what they based themselves on and what was in their best interests." He also mentioned that he consulted the custom of the Muslims. This shows us two things:

- Things are carried out according to analogy or *istihsan*, even if there is no text, and the Muslim uses whichever of them is most in keeping with the case and the aims of the *Shari'a*.
- When there is no analogy or *istihsan* on the question, Abu Hanifa looked to see what the behaviour of the people was. The behaviour of the people is the normative custom among them. He acted by the custom if there was no text in the Book, *Sunna* or consensus, and there had been no application of analogy based on another ruling or *istihsan* with all its methods.

Generally speaking, the sources indicate that making use of custom is one of the sources of deduction and one of the principles which can be used in the absence of any of the other principles.

Ibn 'Abidin says about the *mufti*, "The person who makes rulings must know the *fiqh* regarding the rulings of universal events and possess understanding of the actual situation and people's circumstances in order to be able to distinguish between the truthful and liar, true and false and so forth. Thus when the *mufti* gives a *fatwa* based on custom, he must know the circumstances of the time and know whether this custom is general or particular."

A note about Abu Hanifa's *fiqh*

Abu Hanifa was a free man who wished for others' freedom just as he desired it for himself. For that reason, he was very eager in his *fiqh* to show respect for man's independence in his dealings, as long as he was sane. So he did not allow anyone to become involved in the private dealings of a sane person. It was not up to the community, or the authorities who represented it, to involve themselves in people's private affairs as long as a religious injunction had not been violated or other people's rights breached. Although it is necessary for the authorities to become involved in preserving public order, a person is not to be compelled to live his private life in a particular manner nor is it stipulated how he must deal with his private property.

An example of this is seen in Abu Hanifa's view of the authority of a sane adult woman regarding her marriage. He did not accord her guardian any authority over her and he is the only one of the four imams to take that position. We also find that he forbade declaration of legal incompetence in the case fools, heedless people and debtors and he also forbade any restriction whatsoever on the way a person disposed of his property except where the *deen* was concerned.

Concluding Note

The Hanafi school, discussed by scholars, on whose principles questions are extrapolated, is not simply the position held by Abu Hanifa alone. It consists of his positions and those of his companions. If you wish, you could say that it is the position of the school of Abu Hanifa in Kufa, and then after his death it was taken by his students, Abu Yusuf and ash-Shaybani, to Baghdad.

That is why the Hanafi school was an amalgamation and did not purely reflect the positions of Abu Hanifa in the way that the positions of Malik are reflected in the Maliki school and those of ash-Shafi'i in his school. There are several reasons which resulted in the Hanafi school comprising this fusion of the opinions of Abu Hanifa, his companions and the *fuqaha'* in Iraq contemporary with him, like 'Uthman al-Batti, Ibn Shibrama and Ibn Abi Layla.

One reason for this was that Abu Hanifa's statements are not transmitted in detail as distinct from the positions of others. The Iraqi position is transmitted as a corpus in which it is not easily possible to disentangle the various strands into the statements of each individual.

Another reason is that, in his study of various problems, Abu Hanifa relied on the debate and discussion of those issues that took place among his students. Due to his immense scrupulousness, belief in the truth and respect for freedom of thought, he asked his students to follow the direction to which the evidence led. Abu Yusuf recorded the positions of Abu Hanifa along with his own views. Thus the positions presented are a composite.

Abu Hanifa's students were in fact independent *mujtahids* in their own right. Each of them had his own opinion which might be similar or far from that of his shaykh, even if the methods they used were similar. If you read the books of the school of Abu Hanifa, you will often see a great difference in opinions because of this characteristic of his school.

It was not only the companions of Abu Hanifa whose positions were mixed together. After them the views of other *fuqaha'* were added to what had been transmitted from him and his companions. Some were Hanafis and some were not. All of this resulted in a lot of divergent views and choices, all of which was based on exact rules and clear principles. Thus what came to be Hanafi *fiqh* represents the *fiqh* of Iraq rather than simply the views of Abu Hanifa.